



**The Planning Inspectorate
Yr Arolygiaeth Gynllunio**

The Planning Act 2008

Redditch Branch Enhancement Scheme

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Transport**

Helen Adlard

Examining Authority

Examining authority's report in respect of a new railway track running alongside the existing Barnt Green to Redditch line between Alvechurch and Weights Lane, and associated development

Date: 2 August 2013

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File Ref TR040005

The application, dated 21 August 2012, was made under section 37 of the Planning Act 2008 and was received by the Planning Inspectorate on 4 September 2012.

The applicant is Network Rail Infrastructure Limited.

The application was accepted for examination on 1 October 2012.

The examination of the application began on 7 January 2013 and was completed on 30 May 2013.

The development proposed comprises the construction and operation of a new railway track 3.2km long running alongside the existing Barnt Green to Redditch line, a new platform and footbridge to connect both platforms at Alvechurch station, diversion of footpath (579(C)) across the new footbridge, re-locatable equipment buildings and a new permanent access route from Weights Lane.

Summary of Recommendation: the Order be made with modifications

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**ERRATA SHEET – Redditch Branch Enhancement Scheme - Ref.
TR040005**

**Examining authority’s Report of Findings and Conclusions and
Recommendation to the Secretary of State for Transport, dated 2
August 2013**

**Additional correction confirmed necessary by Department for
Transport on 6 November 2013**

Page No.	Paragraph	Correction
A36	4.132, second line	“south” should read “north”

Correction of this typographical error does not affect the terms of the
Department for Transport’s decision letter of 31 October 2013.

1 INTRODUCTION

- 1.1 The Redditch Branch Enhancement Scheme is a nationally significant infrastructure project (NSIP) as defined by s14(1)(k) and s25 PA 2008 (construction and alteration of a railway) and to the extent that development is or forms part of a nationally significant infrastructure project, development consent is required before that project can proceed. It is a railway project under s25 PA 2008 because the railway as constructed and altered will be wholly in England, will be operated by an approved operator (Network Rail) and the development proposed to be carried out is not permitted development¹.
- 1.2 An application for development consent was submitted on 4 September 2012 and accepted for examination on 1 October 2012. I was appointed on 6 December 2012 as the Examining authority to examine and report on the application. The examination began on 7 January 2013 and was completed on 30 May 2013. The main examination events are detailed in Appendix A.
- 1.3 Development consent under the PA 2008 can only be granted by the Secretary of State and this report provides the Secretary of State for Transport with my findings and conclusions on the application for development consent for the Redditch Branch Enhancement Scheme. This report also comprises my recommendation on whether to grant consent for the project and recommendations on the terms of the Development Consent Order should the Secretary of State agree with my recommendation.

¹ Development in relation to which planning permission is granted by article 3 of the Town and Country Planning (General Permitted Development) Order 1995.

2 MAIN FEATURES OF THE PROPOSAL

- 2.1 The proposed Redditch Branch Enhancement Scheme (an overview is provided on the plan APP-005) comprises:
- 2.1.1 Construction of a new 3.2km railway track running alongside the existing Redditch branch line between Alvechurch and Weights Lane to the north of Redditch (the new "loop"), mostly on land within the boundaries of operational land for the existing line; realignment of the existing single railway track.
 - 2.1.2 Work to the existing embankments and cuttings and construction of retaining walls to accommodate the new track.
 - 2.1.3 A new permanent highway access route from Weights Lane for maintenance of the new railway.
 - 2.1.4 Alterations to the overhead line electrification including the construction of single track and twin track cantilevers along the length of the loop and four OLE portals² at Alvechurch station.
 - 2.1.5 Cable troughing to run along the edge of the tracks to carry new telecommunications and signal cables associated with the scheme.
 - 2.1.6 A number of new signals to control train movements on the loop and two new re-locatable equipment buildings to house signalling and telecommunications equipment.
 - 2.1.7 A new platform at Alvechurch station and a new footbridge with lift towers to accommodate a passenger lift, to allow passengers to pass from the existing platform to the new platform.
 - 2.1.8 Extinguishment of footpaths and the creation of alternative footpath routes where these cross the railway.
 - 2.1.9 Two new ponds in Butlers Hill Wood as mitigation for the temporary habitat loss and disturbance of Great Crested Newts.
 - 2.1.10 Temporary haul roads and three construction compounds accessed from Scarfield Hill, Grange Lane and Weights Lane.
 - 2.1.11 Compulsory acquisition powers are sought over some land outside the control of the applicant, including land required for construction compounds. Powers are also sought to override existing easements and other private rights which may exist on current operational land as well as land proposed to be acquired to accommodate the scheme.

² A steel structure with two columns, one each side of the railway track, supporting the overhead electrified lines usually for two or more tracks (APP-034 Glossary).

- 2.2 The purpose of the Redditch Branch Enhancement Scheme is to allow trains to pass each other enabling an increase in train frequency from two to three trains per hour on the Redditch Branch line³. The proposal lies wholly within the boundaries of Bromsgrove District Council (BDC) and two of its parishes of Barnt Green and Alvechurch.
- 2.3 The new loop starts at Alvechurch station which lies immediately to the east of the Worcester and Birmingham Canal within the valley of the River Arrow. It runs through agricultural land characterised by fields with isolated properties and farmsteads and small areas of woodland and hedgerows. A small industrial area at Weights Farm lies at the southern end of the scheme.
- 2.4 Some application documents were updated during the course of the examination. The final submitted versions of amended documents are: land plans (PD104 - PD110), works plan for Alvechurch station general arrangement (PD-111 and PD-112), works plan (PD-113), footpath stopping-up plans (REP-075 and REP-076) the Ecological Impact Assessment report (PD-102), the Book of Reference (BoR) (PD-026), the draft Development Consent Order (DCO) (PD-018) and Explanatory Memorandum (EM) (PD-021). None of these documents contained any substantial changes to the application and were subject to scrutiny during the examination: there were proposed changes to the powers and restrictions within the DCO, and minor changes to footpath alignment and plot boundaries shown on land, footpath stopping-up or works plans all of which fell within the original Order limits. Other changes made to the application documents comprised updated details of landowners in the BoR, all of whom had been properly consulted and notified. The application to be determined is therefore the application that was accepted for examination as amended by these updated documents.

³ APP-027 paragraphs 3.1 and 3.2.

3 LEGAL AND POLICY CONTEXT

Legal framework

- 3.1 The Secretary of State has not published a national policy statement⁴ (NPS) concerning rail infrastructure. In the absence of a relevant NPS having effect, I am reporting on this application to the Secretary of State under s83(1)(b) of the PA 2008 and the Secretary of State will make his decision under s105 of the PA 2008 under which he must have regard to:
- 3.2 any local impact report;
- 3.3 any prescribed matters; and
- 3.4 any other matter the Secretary of State considers both important and relevant to his decision.
- 3.5 The applicant issued a screening request on 16 June 2011 to the Infrastructure Planning Commission⁵ (IPC) under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) to determine whether the development was EIA development⁶ and the IPC adopted an opinion on 25 August 2011 that it was not and therefore no environmental statement was required to be submitted with the application. The IPC advised that seven separate reports on specific environmental matters be prepared in order to assist the examination of the application. Eight environmental reports were prepared and submitted with the application (APP-031-APP-038).
- 3.6 I have continued to have regard to my duty to keep under review whether the proposal comprises EIA development in examining the application; the description of the proposed development has not changed and only minor changes to application documents were submitted during the examination (paragraph 2.4 above). I am satisfied that having regard to the matters in Schedule 3 of the EIA Regulations, and given the presence of an existing line, the scale and nature of the proposed development, the characteristics of the potential impact, and the nature of the receiving environment including the sensitivity and numbers of sensitive receptors likely to be affected that the proposal does not constitute EIA development.
- 3.7 Every public authority has a duty under the Natural Environment and Rural Communities Act 2006 (NERC) with regard to the

⁴ As defined by s5 of PA 2008 and referred to in s104 of PA 2008.

⁵ The Infrastructure Planning Commission was abolished on 1 April 2012. Under the Infrastructure Planning (Transitional Provisions) Direction 2012 anything done by the Commission in relation to an application or proposed application prior to 1 April 2012, was to be treated as if it had been done by the Secretary of State, if the Commission had been notified under section 46 of the PA 2008 for that proposal.

⁶ As defined in the EIA Regulations.

conservation of biodiversity⁷ and in particular the Secretary of State must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992⁸ when deciding an application for development consent and I have reported on biological diversity matters in the section concerning the natural environment below (paragraphs 4.29-4.48).

- 3.8 There are additional duties on the Secretary of State under s41 of the NERC to publish a list of living organisms and types of habitat of principal importance for the purpose of conserving biodiversity and to take reasonably practicable steps to further their conservation. Specific steps are required to be taken under the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations) in order to protect species and habitats. The Habitat Regulations also require competent authorities⁹ to have regard to the requirements of the Habitats Directive¹⁰.
- 3.9 With regard to European protected species¹¹ I have set out my findings and conclusions in the nature conservation section below (paragraphs 4.34 - 4.38) taking into account the representations made by Natural England (NE) who is a statutory consultee in respect of NSIPs and whose general statutory purpose is '...to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development'¹². There are limited exceptions to the strict protection from disturbance of protected species under the Habitats Regulations and in those cases a licence¹³ is required from NE before any disturbance takes place.
- 3.10 If there were European designated sites directly or indirectly likely to be significantly affected by the proposed development (either alone or in combination with other plans or projects), an appropriate assessment under Regulation 61 of the Habitats Regulations would need to be undertaken by the Secretary of State prior to granting consent for the project, if he were so minded. There are no European sites on land affected by the proposed development (APP-026) and NE agreed (REP-018) that no such sites would be likely to be significantly affected indirectly by the proposed development, having considered evidence of the indirect link to such sites through watercourses. It is my view that there are no European sites likely to be significantly affected by this development and that an appropriate assessment is not required.

⁷ Section 40: 'Every public authority must, in exercising its functions, have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'.

⁸ Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (as amended).

⁹ Defined in Regulation 7 of the Conservation of Habitats and Species Regulations 2010.

¹⁰ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

¹¹ Listed in Annex IV of the Habitats Directive.

¹² Section 2 NERC Act.

¹³ Regulation 53 of the Conservation of Habitats and Species Regulations 2010.

- 3.11 Every public authority also has a duty to have regard to the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010. Representations were received concerning the detail of the station design relating to disabled access to the new platform and I have considered these issues in chapter 4 (paragraphs 4.126 - 4.135).
- 3.12 A number of provisions in the PA 2008 which potentially apply to this proposal set conditions to the inclusion of powers in a DCO, should the Secretary of State decide to grant consent for this development. These include s122 (purpose for which compulsory acquisition may be authorised), s123 (land to which authorisation of compulsory acquisition can relate), s127 (statutory undertakers' land), s136 (public rights of way), s138 (extinguishment of rights, and removal of apparatus, of statutory undertakers). These provisions are addressed at appropriate locations in the report.

Important and relevant policies

- 3.13 I have set out my findings and conclusions in respect of policies of relevance to specific issues examined in later sections of the report. Here I set out the policy context that I consider important and relevant to the application and within which I have drawn conclusions on the evidence in later sections of the report.

National policies

- 3.14 The National Planning Policy Framework (NPPF) was published in March 2012. It does not contain policies specifically concerning NSIPs but in the absence of a relevant NPS, I have considered appropriate parts of the NPPF to be important and relevant to this application and taken the NPPF into account in my assessment of matters arising on this application¹⁴. The relevant Bromsgrove District Local Plan was adopted in 2004 and some policies saved in 2007; the Worcestershire County Council Structure Plan adopted in 2001 was written for the period 1996-2011, therefore where NPPF policies differ from adopted development plan policies, I have placed more weight on the NPPF policy. I have considered later in this report specific NPPF policy on Green Belt in particular (paragraphs 4.17-4.28).
- 3.15 Department for Transport's policy documents 'Delivering a Sustainable Transport System' (Nov 2008) and 'Delivering a Sustainable Transport Railway' (July 2007) are both relevant to appraising transport schemes and have fed into the applicant's Route Utilisation Strategy (RUS) for the railway network (May 2011) in which the Redditch Branch Enhancement Scheme was outlined as a means to improve capacity of the network on the

¹⁴ Paragraph 3 of the NPPF states that the NPPF may be an important and relevant matter when determining an NSIP application.

Redditch branch line. I consider these to be important and relevant policies in my assessment of this application.

Development plan policies

- 3.16 The West Midlands Regional Spatial Strategy was revoked by Order which came into effect on 20 May 2013. Relevant policies were referred to by the applicant in support of the application, and both Worcestershire County Council (WCC) and BDC concurred with the applicant's assessment of the policies in their Statements of Common Ground (PD-001 and PD-004). The RSS policies although adding weight to the applicant's case for supporting sustainable transport, were acknowledged by the applicant in its answer to my question 3.3 (REP-058) as carrying less weight given the Secretary of State's intention to revoke the RSS. The RSS policies were not relied on by any other interested party in the examination to make their case and I have therefore concluded that the formal revocation itself of the West Midlands RSS is not significant to my recommendation, and I do not take the RSS into account.
- 3.17 Worcestershire Structure Plan (2001) saved policy T9 (Rural Transport) which supports measures to encourage the use of alternatives to private transport is referred to by the applicant and WCC and I consider this is relevant. The Worcestershire Local Transport Plan (2011-25) produced by WCC in its role as highway authority is referred to as providing evidence of WCC's objective of working with the rail industry to progress opportunities to increase service frequency to Redditch and refers to forecasts that the number of people using the line will increase. This is relevant particularly to the question of the need for the scheme. The Local Transport Plan was written to 'ensure that transport is able to play a full role in assisting in supporting growth in the local economy and protecting and enhancing the built and natural environments.' (REP-024).
- 3.18 Bromsgrove District Local Plan (January 2004) Saved Policies 2007, includes policies on Green Belt and concerning the assessment of the impact of development proposals on the landscape which are also relevant to this application.
- 3.19 Bromsgrove Core Strategy (Draft Core Strategy 2) January 2011 provides support for sustainable transport measures and sets out proposals for additional housing in the authority's area, including proposed targets for additional housing development in BDC's area. The Redditch Local Plan No 3 (adopted 2006) has allocated a site for additional housing (and other uses) at Weights Lane and proposes further housing development in the area. Housing growth is referred to in support of the need for the scheme by the applicant, and by BDC and WCC in their local impact reports (LIR) (REP-024 and REP-025).

4 FINDINGS AND CONCLUSIONS ON MAIN ISSUES

Introduction

- 4.1 Prior to holding the preliminary meeting I identified a number of principal issues for the examination having regard to the application documents submitted by the applicant and relevant representations submitted by interested parties. These were:

Compulsory acquisition powers	the requirement for the powers sought and the provision of funding required
Green Belt issues	the policy position and whether circumstances, including the evidence provided of the need for the scheme, justify development in the Green Belt
Nature conservation	the impact on protected species including bats, white-clawed crayfish, otters and Great Crested Newts, in particular of the removal of trees and vegetation and potential disturbance to watercourses; proposed additional survey work and the effect of this on proposed mitigation measures
Noise impact	the impact of noise and vibration from the construction phase on those living in close proximity to the proposed development; the effect on existing 'wheel squeal' issues of the proposed development during the operational phase
Transport matters	the impact of the construction phase on the local community from HGV traffic; parking provision at Alvechurch station
Visual and landscape impact	the effect of the proposal in particular on those living in close proximity to the proposed development

- 4.2 I set out in this chapter my findings and conclusions in respect of these issues and any other matters I consider important and relevant raised during the examination, except compulsory acquisition matters which are contained in chapter 6. All

representations (listed in Appendix D of this report) even if not explicitly mentioned have been fully considered in reaching the conclusions set out.

- 4.3 This chapter is structured to deal with the cross-cutting issue of the need for the development first, which is relevant to both the question of whether the development should proceed in a Green Belt location and also to the compelling case that must be made out for the grant of compulsory acquisition powers. It covers additional matters where they most logically fit with principal issues identified at the outset and so after the question of the need for the development the report covers: Green Belt issues, natural environment issues, construction and operational noise, traffic and car parking issues, footpath matters, landscape and visual impact and issues related to station design.

The need for the development

- 4.4 The applicant set out its case for the need for the development in application document (APP-028). The Redditch branch forms part of the Cross City line which is a high frequency, electrified route running from Lichfield Trent Valley via Birmingham New Street to Longbridge/Redditch. Six trains per hour operate on the Cross City North line, four of which extend to Lichfield Trent Valley/Lichfield City. Six trains per hour run on the Cross City South line, only two of which extend beyond Longbridge to Redditch. The Redditch branch runs from Barnt Green to Redditch as a single line.
- 4.5 The applicant considers the Redditch Branch Enhancement Scheme is needed to provide sufficient capacity to accommodate the predicted growth in passenger numbers which will result from population growth in the area and in order to support the Government's policy of promoting sustainable transport.
- 4.6 The Government's White Paper 'Delivering a Sustainable Railway' set out a 30 year vision for the railway in England and Wales and sought growth of the railway aiming to deliver by 2030 'more than twice the passengers of today in more comfort than today'. The Paper also included priorities for the five year control period 4 (CP4) from April 2009 to March 2014 and outlined the projects it would fund for improvements to reliability, capacity and safety. Network Rail is required to set out in its Delivery Plan CP4 how it will deliver the required improvements.
- 4.7 The requirement for capacity improvements on the Redditch branch was highlighted during the preparation of the Strategic Rail Authority's West Midlands Route Utilisation Strategy (2005) published in 2011 (APP-028 at paragraph 3.4). The West Midlands and Chilterns RUS (APP-028 at chapter 5) built on the work of the Strategic Rail Authority and carried out a demand analysis for the West Midlands area in which it was predicted

that passenger rail journeys to and from Birmingham will increase by 32 per cent between 2008 and 2020 (APP-028 at paragraphs 5.1 - 5.2). Further, it considered capacity issues on the Cross City line originating in Redditch and the constraint caused by the single line section between Barnt Green and Redditch concluding that there was inadequate capacity between Redditch and Birmingham New Street to accommodate demand up to 2019 (APP-028 at paragraph 7.8). The RUS was consulted on in 2010.

- 4.8 In answer to my question 4.2 (DEC-004) seeking more detailed evidence of predicted growth of passenger numbers on the Redditch branch line itself, the applicant stated that as part of the work for the RUS an assessment was carried out of forecast passenger demand based on the required methodology¹⁵ set out in the Passenger Demand Forecasting Handbook. This led to a predicted high peak hour and three hour peak growth of 4.3% per annum between Birmingham and Redditch for the period 2009-2019 (REP-058 answer to question 4.2).
- 4.9 I asked a question (DEC-004 question 4.3) seeking clarification of the applicant's position that there was a need for the Redditch Branch Enhancement Scheme in order to alleviate an overcrowding problem elsewhere on the Cross City South line. The applicant stated that from the evidence it could be inferred that if the anticipated spreading of customers across more frequent trains running from Redditch did not occur, potentially there would be overcrowding on the line from Selly Oak inwards towards the city centre. This could happen if the Redditch Branch Enhancement Scheme did not go ahead and there was insufficient capacity to accommodate the growth forecast. (REP-058 answer to question 4.2 (graph showing train capacity against passenger growth forecasts) and 4.3).
- 4.10 Only one local resident raised an objection to the scheme on the basis that the need for the scheme had not been established in the documentation provided with the application, and that trains from Redditch to Barnt Green ran half-empty, but acknowledged that extra capacity may be required between Barnt Green station and Birmingham New Street (REP-009). Another local resident questioned the need to run an increased service at all times (RR-017).
- 4.11 The overwhelming balance of representations received either supported the principle of enhancing the service between Redditch and Birmingham New Street (including in the LIRs from both BDC and WCC and representations from Alvechurch Parish Council and the Barnt Green Residents Association and a number of local residents), or made no comment on the question of the

¹⁵ The Department for Transport requires the methodology is followed in connection with applications for funding of such projects.

need to enhance the service and instead concentrated on adverse impacts of the proposal.

- 4.12 The LIR submitted by WCC assesses the scheme against the objectives set by its Integrated Transport Policy in its Local Transport Plan 3 (2011-2025) and states: 'The proposals by Network Rail meet a recognised existing travel demand and forecasts indicate that the number of people using the line will increase. The scheme supports better use of the rail service between Redditch and Birmingham.' In connection with reliability, it notes 'The existing service can suffer at times of disruption because of the single line track between Redditch and Barnt Green, which can lead to an excessive number of trains on the branch line being cancelled.' WCC specifically identified in studies leading to the preparation of the Local Transport Plan that new residential and commercial land use development in the BDC area will increase travel demand for all transport modes and that if investment in sustainable modes of transport was not forthcoming this could lead to a deterioration in the performance of the highway network. In addition WCC is firmly of the view that this project is 'crucial to the socio-economic future of the Redditch and surrounding area' on the basis that it has the potential to provide improved access and connectivity and will encourage inward investment on the area so impacting the well-being of residents in communities in the Redditch and Bromsgrove areas (REP-024).

Conclusions on the need for the scheme

- 4.13 I am satisfied that the proposed Redditch Enhancement Scheme has been carefully considered through the preparation of the Strategic Rail Authority's West Midlands Route Utilisation Strategy (2005) and a need identified for capacity improvements on Cross City South line and that this scheme will deliver those capacity improvements. I am further satisfied that the evidence provided by the applicant shows that the demand for services on the Cross City South line requires a scheme to increase the number of trains that can be run across the whole of the Cross City South line both to accommodate future demand and to improve the reliability of the service.
- 4.14 It is clear that Government policy is to support sustainable transport modes, both in its White Paper 'Delivering a Sustainable Railway' (APP-027) and also in the NPPF where it states at paragraph 29 that the transport system should be balanced in favour of sustainable transport modes. I consider that this scheme would be an important element in the provision of sustainable transport in this area and would provide the potential for an increase in the use of sustainable transport modes both in the short and longer term. I have placed substantial weight on Government policy which supports rail

capacity improvements brought about through schemes such as these.

- 4.15 I have also placed substantial weight on the strong support for the scheme by both WCC and BDC in their LIRs (REP-024 and REP-025). WCC in particular views this scheme as being required to accommodate increasing demand for train services resulting from planned housing developments, as well as being clearly in line with policies to deliver integrated transport solutions and as a means to encourage inward investment in the County and residents' well-being.
- 4.16 I find therefore that there is a clear need for this scheme.

Green Belt Issues

Findings and conclusions on Green Belt issues

- 4.17 The Redditch Branch Enhancement Scheme falls wholly within the Green Belt designated in the Bromsgrove District Local Plan. The adopted development plan policies that control development in the Green Belt are Structure Plan policy D.39 and Local Plan policy DS2; they respectively apply a presumption against inappropriate development in the Green Belt, or prevent development in the Green Belt unless it falls within a defined list of appropriate development. However, these policies precede NPPF policy for planning decisions about proposals in the Green Belt. The NPPF reaffirms the importance placed on Green Belt, and states that the aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, but it provides more up-to-date policy on inappropriate development in the Green Belt. I have therefore considered the NPPF policy on Green Belt to be more important and relevant than the development plan policy in my findings on this aspect of the application.
- 4.18 The NPPF has at its heart a presumption in favour of sustainable development but in order to grant permission for such sustainable development it is necessary to consider whether specific policies in the NPPF including Green Belt policies indicate development should be restricted. I have addressed below why I consider the development should be classed as inappropriate in the Green Belt and then whether very special circumstances exist which would outweigh any potential harm to the Green Belt.
- 4.19 Both the applicant (APP-027) and BDC in its LIR (REP-025), accept that the proposal should be considered as inappropriate development in the Green Belt when assessed against Green Belt policy in the NPPF. The applicant states that nonetheless account should be taken of the fact that an exception can be given for local transport infrastructure that retains openness of the Green Belt.

- 4.20 The description of the works required for the proposal at (APP-030) indicates that there is development proposed which will encroach on open land in the Green Belt.
- 4.21 The scheme introduces new elements into the landscape: a new 3.2km track by increasing the width of the existing rail corridor (2.28ha across the length of the loop - see paragraph 6.5 below), changes to structures supporting the overhead line electrification (OLE), an additional station platform, footbridge and two lift towers approximately 9m high. These changes lead me to the view that this proposal should be classed as 'inappropriate' development. I do not consider it falls within the exception for local transport infrastructure in paragraph 90 of the NPPF because it does not retain the openness of the Green Belt, and in any event it serves more than a local transport purpose (see paragraph 4.24 below).
- 4.22 There is by definition harm caused to the purposes of the Green Belt as a result of its inappropriateness, and as a result of the effect on the openness of the Green Belt particularly at Alvechurch station. The principal elements of the proposal of a scale to have a permanent effect and cause harm are in my view the footbridge, the second platform at Alvechurch station, and the alterations to accommodate the overhead lines for the second track. Re-locatable equipment buildings¹⁶ and in places the increased width of the rail corridor on embankments also have an effect on openness, but to a lesser extent. I have taken into account the applicant's judgement of the landscape and visual effect on the landscape character but this assessment is not specifically addressed to determine the scheme's impact on the Green Belt. It is relevant, however, that the magnitude of the change on some receptors after landscape mitigation over 15 years has been judged by the applicant to be medium adverse¹⁷ (APP-034 Table 4.2).
- 4.23 In my view the harm that would be caused to the Green Belt is most significant in the vicinity of Alvechurch station as a result of the new footbridge, lift towers and platform. I consider the harm caused would be limited along the extent of the 3.2km linear scheme.
- 4.24 I have considered whether the exception for local transport infrastructure in paragraph 90 of the NPPF, is relevant to the conclusion I must reach on whether very special circumstances exist which would allow the presumption against inappropriate

¹⁶ This term is defined in the Glossary of the Visual impacts report and Landscape plan/strategy (APP-034) as a portable container type building used to house signalling and telecommunications equipment.

¹⁷ This is defined as: "Partial loss of or alteration to one or more elements, features, characteristics or views of the existing conditions. Introduction of elements likely to be prominent but not necessarily considered to be substantially uncharacteristic of the existing character and views." (APP-034 Appendix A).

development to be outweighed, as suggested by the applicant in answer to my question 3.4 (DEC-004). I do not consider that potentially comprising an exception from the category 'inappropriate development' in itself can add to a case for very special circumstances. Paragraph 90 of the NPPF could not lend support for this proposal in my view for the reason that this proposal cannot reasonably be considered as local transport infrastructure. It is defined as an NSIP under the PA 2008 and even if it were not so defined, the proposal is stated by the applicant and WCC in particular to have significance for the wider region and beyond and so is not exclusively local.

- 4.25 In order to grant consent for this scheme it is necessary to demonstrate that very special circumstances exist that would outweigh the harm caused to the Green Belt.
- 4.26 I have concluded that there is a clear need for the scheme to proceed to provide capacity improvements required for predicted growth in passenger numbers on a route to and from Birmingham city centre and to support an increase in the use of sustainable transport modes in accordance with Government policy. There are potential benefits to be derived in the short term from an increased service which would alleviate overcrowding on this line. In addition there is potential for significant longer term sustainability benefits if those travelling to and from Birmingham or beyond chose to travel by train rather than car. This scheme is an essential element of providing that choice for a growing population in this area.
- 4.27 It is clear that from the alternatives studied by the applicant in seeking to determine how to deliver the Redditch Branch Enhancement Scheme that there were no practicable alternative locations for the proposal (APP-028 section 8) and I consider this adds to the case that very special circumstances exist because there is a clear need for the scheme.
- 4.28 I consider that the need for the scheme comprises very special circumstances which would clearly outweigh the harm caused to the Green Belt in this location.

Natural Environment issues

- 4.29 The applicant submitted eight environmental reports to provide information on the potential environmental effects of the proposal. This section concentrates on issues raised in the Ecological Impact Assessment report (APP-031). It also considers briefly wider aspects of the effects of the scheme on the natural environment raised in the Land Quality Report and the Flood Risk Assessment including River Basin Management Impact Assessment (APP-038) because aspects of these were commented on by statutory consultees. Other aspects of the natural environment impacts were not controversial and have

been endorsed as adequately addressed by the relevant prescribed bodies including nature conservation bodies, and BDC and WCC in so far as they had responsibilities for any aspects (PD-001 - PD-004).

Ecology

- 4.30 NE was consulted on the proposed scope of the Ecological Impact Assessment report and on the methodology used in the production of the report. NE confirmed its agreement with these in its Statement of Common Ground (SOCG) (PD-002 paragraphs 2.1 and 2.2 in which it refers to specific items of correspondence).
- 4.31 NE also confirmed in its SOCG with the applicant (PD-002) that the ecological impact assessment adequately assesses the effects of the proposed development for the purposes of the applicant's biological diversity duties concerning protected species and habitats, and specifically in concerning those species and habitats of principal importance under s41 the NERC.
- 4.32 My examination included questions to ascertain whether the survey work undertaken was sufficient to fully understand the likely ecological impacts of the scheme for the purpose of deciding whether or not to grant development consent, and where any gaps in survey data remained whether if carried out at a later date this would provide adequate control over potential impacts. Appendix B of application document (APP-031) sets out the surveys carried out to assess potential impacts on protected species. These surveys were supplemented during the course of the examination in respect of bats (PD-102).
- 4.33 The Ecological Impact Assessment report provides a plan showing the location of relevant statutory and non-statutory designated sites (APP-031 Appendix A.2 Figure 5.9.6). There are no impacts to international sites of nature conservation importance, nor will the proposed development affect any statutory sites of nature conservation importance such as Sites of Special Scientific Interest (SSSI) or Local Nature Reserves (APP-031 section 5.3 and PD-002). Mitigation through the Construction and Environmental Management Plan (CEMP) is required to ensure the Dagnell End Meadow SSSI, which is hydrologically connected to the development site, is not adversely affected by any silty run-off from the construction site (REP-077) and I am satisfied adequate controls are in place to ensure adverse effects are adequately mitigated, in particular through requirement 4 (Construction and Environmental Management Plan) in the DCO.

Protected species

- 4.34 Mitigation for potential disturbance of the Great Crested Newts and temporary loss of their habitat during construction works, including the provision of two mitigation ponds to be created as part of the development for the translocation of the Great Crested Newts is set out in the updated Ecological Impact Assessment report (PD-102 paragraphs 5.5.8-5.5.18) and in the schedule of mitigation provided by the applicant during the examination (REP-077).
- 4.35 Additional bat surveys had been carried out in early August and mid September 2012 and the proposed mitigation of impacts on bats is set out in the schedule of mitigation (REP-077). The applicant has confirmed there is landowner consent to providing bat boxes in woodland outside the control of the applicant (REP-077).
- 4.36 NE agreed that sufficient survey work has been undertaken to exclude the possibility that a European protected species (EPS) licence would be required in relation to White Clawed Crayfish (PD-002). In response to my question (DEC-004 paragraph 9.1) the Environment Agency (EA) advised that as a precautionary measure a further check should be carried out prior to any works affecting relevant watercourses based on conclusions of the survey carried out by the applicant in October 2012 (REP-016) and that it had been agreed an amendment to a requirement in the draft DCO would be made to ensure a further site investigation is carried out in respect of White Clawed Crayfish in connection with works to culverts 11 and 13. In the event that any White Clawed Crayfish are found, requirement 12 requires a scheme for mitigating impacts must be included in the ecological management plan to be carried out as approved by BDC in order to achieve this and I am satisfied this accords with the EA's agreement in its SOCG (PD-003).
- 4.37 In order to assist the Secretary of State in any consideration of the derogation tests that would need to be met prior to the grant of a licence for disturbance to protected species resulting from this proposed development, I asked a question (DEC-004) to establish whether there was any reason these tests would not be met and this was subsequently confirmed by NE (REP-057 in answer to question 9.7 and REP-080).
- 4.38 The required ecological mitigation for protected species will be adequately provided for by requirements 11 (Ecological Management) and 12 (Mitigation of effects on protected species) included in the draft DCO (referred to as requirements 10 and 11 in the schedule of mitigation (REP-077)) and also by meeting the requirements for a protected species licence from NE (PD-002). NE has also confirmed there is no reason why licences for the movement of Great Crested Newts and bats will not be granted

at the appropriate time (REP-080 and REP-079 at Appendix 3 respectively). Both requirements 11 and 12 were amended during the course of the examination and I am satisfied that as amended they will ensure adequate mitigation for all nature conservation impacts as well as securing opportunities to enhance conservation (REP-080).

Loss of habitat

- 4.39 I consider the loss of mature tree specimens and hedgerows will be mitigated through the landscaping scheme which is controlled through requirements 5 (Landscaping) and 6 (Implementation and maintenance of landscaping) in the DCO as well as through the ecological management plan. The landscape plan/strategy (APP-034) reflects the recommendations in the Ecological Impact Assessment report and includes an arboricultural implications assessment (see section 5 of APP-034 and the schedule of mitigation REP-077).
- 4.40 Particular concern about the potential loss of trees due to potential root damage from conflict with the site compound access at Scarfield Hill/Station Road was considered in the examination (REP-015) and I note that mitigation for any effects will be secured primarily through requirements 4 (Construction and Environmental Management Plan), 13 (Trees) and 14 (Trees - removal of crowns and other alterations).
- 4.41 The loss of habitat from impacts to watercourses is negative and permanent but not considered by the applicant to be significant. Habitat management will encourage recolonisation of vegetation. The landscape strategy includes proposals to retain particularly important mature trees, replacement planting and translocation of woodland edge and native species rich hedgerows on the new embankments to ensure a net gain of these habitats, some of which are of nature conservation importance within the local area (PD-102 section 5.4).
- 4.42 I consider that adequate mitigation is proposed for the permanent loss of some habitat both of watercourses and terrestrial habitat such as species-poor hedgerows and woodland edge. With habitat management of streams and ditches, reinstatement of most of the terrestrial habitat affected, or natural re-establishment of some after completion of the development a deficit of some 7000m² of terrestrial habitat will remain but only some of this is considered by the applicant to have local importance beyond the site itself (PD-102 section 5.4). Replacement planting of hedgerows will result in an overall gain of 700 linear metres (PD-102 section 5.4) as proposed by the applicant (see also the schedule of mitigation (REP-077)).

Overall conclusions on nature conservation issues

- 4.43 My findings on nature conservation issues are that proper assessment has been undertaken in respect of all relevant matters and that the mitigation proposed in the Ecological Impact Assessment report, together with additional proposals agreed by statutory nature conservation bodies during the examination, is adequate. I conclude that the protection afforded by the requirements in the DCO and the licensing required in respect of EPS (about which NE has provided "letters of comfort" which state that there is no reason why licences should not be granted at (REP-079) Appendix 3 and (REP-080)) is such that there would be no significant adverse impact on nature conservation as a result of this proposal.
- 4.44 With regard to the derogation tests set out in the Habitats Regulations that would be applied by NE prior to granting a licence under Regulation 53 in respect of potential disturbance to protected species or their habitats, I consider it reasonable to conclude on the facts available during the examination and in light of the representations from NE during the examination that there is no reason the derogation tests would not be met.
- 4.45 I also consider that opportunities have been taken to reinstate and improve habitat to encourage flora and fauna. That fact together with the mitigation proposed, means that I am satisfied that duties under the NERC would be fulfilled and that proper regard has been given to obligations under the Habitats Directive and in respect of biological diversity.

Other impacts on the natural environment

- 4.46 The EA was consulted by the applicant on its proposals for handling waste, ecology, drainage, contaminated land and groundwater and has confirmed in its SOCG (PD-003) its agreement to the proposed mitigation of potential impacts through the imposition of requirements. The detail of the requirements was considered through the submission of written representations and comments during the examination and where any outstanding drafting matters remained, at the specific issue hearing on the DCO. The EA had advised additional ground investigations would be required prior to commencement of development to confirm the low contamination risk of the scheme within the south eastern area of Alvechurch Dredging Landfill; the Health Protection Agency advised in respect of the same issue (REP-052). This has been secured by requirement 17 in the draft DCO.
- 4.47 Specifically with regard to potential flood risk associated with this development, the EA had questioned during the examination aspects of the flood risk assessment (FRA) and in respect of drainage matters and subsequently confirmed in their SOCG with

the applicant that the EA was satisfied that the FRA was appropriate and that the requirements in the draft DCO were adequate to address drainage and flooding matters (PD-003).

- 4.48 I conclude that other impacts on the natural environment will be adequately controlled through mitigation secured through requirements 4 (Construction and Environmental Management Plan), 16 (Drainage) and 17 (Contaminated land and groundwater) in the DCO.

Noise issues

Construction phase

- 4.49 The construction of this proposed development would take approximately 12 months¹⁸ and involves both construction activities and a significant number of lorry movements for a temporary period to deliver materials and remove waste. Given the linear nature of the scheme the impacts would not be experienced across the whole area for the whole of the construction period.
- 4.50 The noise assessment undertaken by the applicant (APP-033) carried out a detailed assessment of a study area consistent with the Calculation of Railway Noise 1995 methodology and so was restricted to an area with boundaries 300m from the scheme (APP-033 at 3.4); permanent impacts resulting from an increase in frequency of services and temporary noise impacts from construction traffic using local roads outside the 300m assessment boundary were highlighted as remote effects. Construction noise and vibration impacts were determined by taking into account appropriate standards and guidance including BS 5228:2009 Parts 1 & 2 'Code of practice for noise and vibration control on construction and open sites' (APP-033 at 3.3).
- 4.51 Worcestershire Regulatory Services (WRS) which provides environmental health and other technical services to BDC and the other local authorities in Worcestershire, agreed the proposed methodology for the noise assessment and advised on their preferred manner of dealing with noise impacts (PD-004).
- 4.52 The noise assessment report had concluded that appropriate dB LAeq limits potentially would be exceeded during the construction works at noise sensitive receptors (NSR) lying within 40m or 100m during the daytime, between 100m and 200m in the evening and between 200m and 500m during the night-time (Appendix E and summarised at Table 6.1 of APP-033). These predicted noise levels are summarised and tabulated against each broad activity in the project (e.g. haul

¹⁸ APP-037 paragraph 4.9.1

road construction, piling works required for overhead line electrification works).

- 4.53 I asked for clarification on some aspects of the applicant's noise assessment including whether combined noise effects from a number of construction activities had been considered and for details on the locations of NSRs which might be potentially affected by the construction activities (DEC-004 - 8.1 and 8.2). The applicant's response indicated that the reasonable worst case scenario over typical 12 hour day, 4 hour evening and 8 hour night assessment periods had been provided, and that the prediction of the level of noise impact on NSRs was as accurate as possible given the stage of planning the construction project had reached and that further assessment would be undertaken as part of the subsequent consent process under s61 of the Control of Pollution Act 1974 (REP-058 paragraphs 8.1 and 8.2).
- 4.54 One complaint raised during the examination was about the disturbance associated with the construction of this development to residents living close to the construction compounds, both as a result of the size of the compounds and also because of the potential for 24 hour working at those locations. Another complaint concerned the impact of increased HGV traffic which is dealt with in the traffic section below.
- 4.55 The measures proposed to mitigate the noise during the construction period will be contained in the Construction and Environmental Management Plan (CEMP) which is to be submitted to BDC for approval in accordance with requirement 4 in the DCO. In particular the CEMP must be in accordance with the environmental reports which form part of the application and were updated during the course of the examination to take into account changes to proposed mitigation in response to issues raised by interested parties. The CEMP will include a nuisance management plan to control noise and vibration amongst other matters. The CEMP must reflect Network Rail's Contract Requirements - Environment, Issue 6, September 2011, which will be used to instruct contractors and will require that affected residents are kept fully informed about works proposed outside normal working hours and that discussions are held to resolve any problems that have arisen (EV-016 Appendix 7).
- 4.56 At the Open Floor Hearing (OFH) and again at the DCO hearing concern was expressed about the impact on properties in Grange Lane likely to be affected by potential 24 hour working at the construction compound located there. In one case, it was agreed the property concerned lay within the 200m limit determined for construction compound impacts at night (Critchlow: (EV-005) and (EV-020)). As a result of the concern expressed the applicant changed requirement 4 of the DCO to ensure that all activities connected to the development outside the operational railway land take place during the normal working day, unless

those have first been notified and approved by BDC under s61 Control of Pollution Act 1974.

- 4.57 The applicant considers the control from the s61 process where the local authority can impose conditions and has powers to stop construction activities if conditions are not complied with, provides sufficient assurance that individual properties will be carefully considered and that well used practices to reduce noise to a minimum will be employed. At the DCO hearing I questioned the applicant about how robust the control through the s61 process was (EV-020). The applicant confirmed that in its experience it was rare for a local authority to require an activity to cease for breaching conditions attached to a s61 consent because in the applicant's view it had considerable experience in successfully keeping construction noise to a minimum; however the powers were there and it was therefore a valid mechanism by which to control the impact on individual properties.

Operational noise

- 4.58 The noise assessment provided by the applicant (APP-033) confirmed that at some properties within the detailed assessment area the increase in number of trains, realignment of the existing track and the new rail loop would result in an increase in average day-time noise levels of up to 3 dB LAeq 18hr, which is considered by the applicant's assessment to be a minor impact in the short term and negligible in the long term.
- 4.59 A number of strong objections, in particular from Barnt Green Parish Council, were made to the noise impact of additional train services which would be run as a result of this development (including RR-011, RR-023, RR-032, REP-012 and REP-014). There is an issue of wheel squeal on this branch line, in particular in the area of Barnt Green station outside the development site boundary. This issue is acknowledged by WRS (RR-031). In the past a noise abatement notice has been served on a train operating company as a result of noise generated by trains on the tracks at this location (REP-014) and systems to reduce the noise impact introduced and maintained¹⁹.
- 4.60 In answer to my question (DEC-004), WRS indicated that the operational noise impact of the development could be "above that of normal intensification" (REP-055). WRS clarified subsequently (REP-070) that its position on operational noise resulting from the development was set out in the SOCG between the applicant and BDC, which stated: "The noise assessment report provides an accurate assessment of the likely operational effects of the Scheme" and "The relocation of an existing lubricator onto the mainline will improve further the side

¹⁹ A Kelsan Friction Modifier system is in place (see REP-028 paragraph 33.01)

rail noise at Barnt Green. This is currently being progressed by Network Rail Maintenance and Asset Engineering teams independently of the Redditch Branch Enhancement Scheme" (PD-004).

- 4.61 The applicant responded to the matter of noise impact linked to an intensification of use of the railway, in its comments on written representations and answers to my questions (REP-034 paragraph WR6.07). It provided an extract from a previous Inspector's report on the West Coast Main Line TWA Order - Nuneaton Sector - Nuneaton Capacity quoting from the Parliamentary Committee dealing with the Channel Tunnel and CTRL Bills: "the Land Compensation Act [1973] reflects the view of successive Governments that those who purchase property near existing roads or railways, do so in the knowledge that traffic can change in composition or volume and that it would not be right to require the relevant authorities to pay compensation solely because traffic patterns have altered in this way. We do not seek to undermine the existing regime relating to intensified use of railways, which is underpinned in this way by primary legislation". The applicant stated that compensation through the Land Compensation Act 1973²⁰ would not be available to the residents of properties at Barnt Green because they are too remote from the works being carried out.
- 4.62 On the accompanied site visit I heard the wheel squeal complained of and understand and sympathise with the residents concerned. This is an existing problem which the applicant has confirmed it continues to seek to resolve. Parliament has previously determined the extent to which compensation should be provided for those affected by disturbance from public works. The impact here is as a result of an increase in services which in the past have caused a nuisance sufficient to justify serving a noise abatement notice, albeit mitigation through the Kelsan Friction Modifier system²¹ introduced since then has lessened the problem. It is relevant that Parliament has deemed in what circumstances compensation should be available and that the applicant has acknowledged that the residents at Barnt Green in any event would be too remote from the project to be compensated in this way.
- 4.63 The noise assessment report (APP-033) states that it is expected that the increase in frequency of trains would result in minor operational impacts of approximately 2dB at dwellings closest to the line between Barnt Green and Alvechurch stations outside the study area of the noise assessment. For comparison

²⁰ Part 1 provides for compensation for depreciation of land value by physical factors caused by the use of public works.

²¹ The applicant submitted a report during the examination entitled "Acoustic Trial of Kelsan Friction Modifier at Barnt Green - Thameslink Programme, March 2009" referred to in the Noise Assessment report to provide an objective assessment of the mitigation of noise nuisance provided by this system.

purposes the applicant describes a 10dB increase or decrease as approximating to a subjective doubling or halving of loudness (paragraph 5.4.2 APP-033).

- 4.64 WRS confirmed that the applicant's assessment provides an accurate assessment of the operational effects of the scheme. Given WRS's detailed knowledge of the wheel squeal issues on this branch line and at Barnt Green in particular (including knowledge of previous noise assessments undertaken), I consider I can place significant weight on their acceptance that the assessment of a 'minor' impact on properties close to the railway at Barnt Green station is accurate. This minor impact, of course, is the predicted change to the existing noise in this location from the existing train services.
- 4.65 At the OFH Barnt Green Parish Council acknowledged that the current system properly maintained provides adequate protection on the basis of two trains per hour but considered that one extra train per hour would mean the irritation factor for residents would become more intense. At the close of the examination Barnt Green Parish Council remained of the view that a requirement should be imposed in the DCO requiring the applicant to carry out an independent review of the best method for reducing wheel squeal noise and to require it to maintain the system utilised (REP-084).

Findings and conclusions on construction and operational noise matters

- 4.66 I have taken into account policy in the NPPF in paragraph 123 which states that planning decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development, and to mitigate and reduce to a minimum other adverse impacts arising from noise from new development including through the use of conditions.
- 4.67 The applicant clearly has significant experience in managing construction projects of this kind and I am persuaded that it is committed to ensuring the impacts on local residents, of what will be a period of considerable disturbance, is minimised as far as possible. Although I appreciate that appropriate noise thresholds (REP-058 answer to question 8.4) could be exceeded during construction at certain properties in particular those close to construction compounds, haul roads and Alvechurch station. In light of the controls in place through requirement 4 in the draft DCO and the applicant's record in managing such projects, I am satisfied the residual impact will be acceptable given that it will be for a temporary period.
- 4.68 I am satisfied that the controls in place for the management of the noise impacts of the construction phase are robust, and

reflect fully the assessments undertaken and the detailed alterations proposed during the examination.

- 4.69 Taking into account that Parliament has deemed the circumstances when compensation should be payable for noise impacts connected to the use of public works projects, and that the likely increase in services would result in a 'minor' impact, I do not consider the harm likely to be caused by an increase in services is sufficient to justify refusing consent for this scheme.
- 4.70 In view of the fact that the wheel squeal issue is clearly being monitored by WRS as an existing problem related to the operation of the rail service, and which mainly lies at some distance from the development site itself, I do not think it would be reasonable to impose on the applicant a requirement in connection with this development, to continue to do what the applicant is already doing.

Traffic issues

Construction traffic

- 4.71 The applicant provided with its application a draft CEMP which included a draft Traffic Management Plan setting out information to enable an understanding of the likely impacts to result from construction traffic on the road and footpath network and some properties adjacent to haul roads (APP-037). It contains proposals for traffic routing and other means to manage the impacts.
- 4.72 WCC as highway authority confirmed in its SOCG (PD-001) that they were consulted during the preparation of the draft Traffic Management Plan and were satisfied with the site access points and construction access routes proposed. WCC considers it would have appropriate oversight and control of impacts on highways through being consulted by BDC on the CEMP and on highway access matters under requirements in the DCO.
- 4.73 The applicant's noise assessment considered the effects of noise arising on the road network from an increase in road traffic from construction vehicles. The estimate provided in the Traffic Management Plan (APP-037, Appendix B paragraph 2.1) is that the project would generate in total approximately 17,500 vehicle movements distributed across the local roads. This would equate to up to 8 vehicles per hour in one location at Weights Lane (REP-058 answer to question 8.3). It concluded that noise at dwellings along local roads would not exceed 57 dB LAeq (which is below the stated appropriate daytime limit of 65 dB LAeq) during a typical hour and that the construction traffic was not of a sufficiently high volume to result in significant noise and vibration impacts in the wider road network. The applicant further stated in response to my question (DEC-007 paragraph

4.1), referring to a representation from a resident who lives on the A441 and considers highway safety issues will be exacerbated by the construction traffic for this project, that the A441 is categorised as capable of accommodating sustained lorry movements and that neither the highway authority nor the relevant police authority had objected to the use of this route for construction traffic.

- 4.74 A reference in the draft Traffic Management Plan to an anticipated 5000 vehicle movements during the whole construction period on the main haul road (APP-037 at Appendix B paragraph 7.5) which runs very close to and past some properties (including Butlers Wood Cottage) in particular prompted scrutiny of the applicant's proposals to mitigate this impact and my careful inspection of the location of the proposals during the Accompanied Site Visit (ASV). One representation was submitted expressing concern about the effect on the residents' living conditions for a year (RR-036) and late in the examination other residents affected by the haul road and construction compound at Weights Lane submitted representations about the impact of the size of the compound on their living conditions (REP-023). The applicant confirmed during the examination that negotiations had continued with the parties concerned (REP-029 paragraph 38.03-38.06). The proposed mitigation will be controlled through the Construction and Environmental Management Plan under requirement 4 in the DCO (REP-077) under 'Noise'.
- 4.75 A site to the north of Weights Lane has received planning permission from BDC for a mixed use development (details of which were provided by BDC after the ASV (EV-004)) and the developer concerned objected to the location of the haul road and construction compound on the basis that the use of the road and compound for a temporary period could conflict with carrying out the mixed use development (REP-017). This matter will be considered in the compulsory acquisition chapter as there were no specific representations put forward by the developer of the mixed use development to indicate construction traffic from the Redditch Branch Enhancement Scheme project would affect the delivery of the mixed use development.
- 4.76 The majority of the representations submitted during the examination on traffic and highways issues concerned the permanent impacts of the development: a potential for increase in car parking at Alvechurch and Barnt Green stations, and also concerned footpath matters.

Car parking

- 4.77 Representations were put forward by both Alvechurch and Barnt Green Parish Councils, as well as from a number of residents during the course of the examination, on the need to consider

the impact of persons wishing to park additional cars at stations as a result of increasing the train service on this line. It was clear from the Parish Councils' representations that in their view insufficient parking would be available at both Alvechurch and Barnt Green stations to accommodate any increase in passengers arriving at the station by car and this would adversely affect the areas surrounding the stations due to an increase in on-street parking.

- 4.78 The written representations from Alvechurch Parish Council in particular (REP-019, REP-050 and REP-083) and their contributions to the OFH and DCO hearing, underlined support for the scheme because it could increase travel by sustainable transport modes. This was so especially in view of proposals for significantly more housing in the vicinity and hence potentially more people wishing to use the train. The Parish Council warned that without a joined up approach to infrastructure development ensuring that train stations provide services required to satisfy the increased demand for services, the objective to shift travel patterns to sustainable modes would not be as successful as anticipated. The Parish Council pointed to the apparent unwillingness of the applicant to take responsibility for the provision of additional car parking on the basis that that was a matter for the train operating company who operated the station.
- 4.79 Alvechurch Parish Council also noted that the existing Alvechurch station car park was not adequately maintained and that drainage problems prevented its use to full capacity; there were also no measures for the protection of users of a public footpath that crossed the car park. On an unaccompanied site visit during wet weather I saw for myself there was a noticeable impact on the capacity of the car park due to the drainage problem.
- 4.80 Barnt Green Parish Council considered that charges should be removed for parking at Barnt Green station car park to ensure it was used to capacity and avoid exacerbating the problem of on-street car parking near the station. The Parish Council also proposed in representations (REP-014) that some land adjacent to the track could be used for additional car parking on a temporary basis during the 8 week blockade which is a period when trains would not go beyond Barnt Green and so demand for parking at this location would increase. They reiterated in their final representation to the examination that in the absence of proposals within the DCO to require a number of improvements to Barnt Green station (including car parking) they were unable to support the scheme.
- 4.81 The applicant stated that the impact from traffic in the vicinity of the stations affected by the proposal was likely to be small (less than 5% increase in hourly traffic flows) and this may be offset by a reduction in longer trips or spreading of arrivals and

departures (REP-058 answer to question 5.3). It also considered the need for additional car parking should be properly investigated with all relevant stakeholders through the Department for Transport's process of preparing a station management plan and confirmed that it would participate in that process. With regard to the proposal put to it by Barnt Green Parish Council, for use of additional land adjacent to the Barnt Green station car park for parking particularly during the 8 week blockade, the applicant stated the land was not suitable for that purpose because it was operational land immediately adjacent to the railway tracks. I saw on the ASV that this land was fenced off for safety reasons.

- 4.82 WCC responded to my questions in their capacity as highway authority to explain their powers to control on-street parking in the vicinity of railway stations and that using these powers would be considered if WCC criteria were met and in connection with residents' well-being. WCC also commented that parking at stations could encourage modal shift from car to train but it would also have to consider whether the local road network had capacity to cope with traffic that a new station car park would generate. Related to saved Structure Plan policy T.6, WCC's view is that Alvechurch is not an appropriate site for a larger car park as this would draw people from the Redditch area, but that WCC considers the condition of the existing car park should be improved (REP-071).
- 4.83 WCC noted that on-street parking near Barnt Green station is likely to improve on the development of a 24 space car park in the vicinity connected to a new housing development (REP-071).
- 4.84 BDC considered that if there was a proven need for additional car-parking at the railway stations concerned it would work with others to facilitate its provision if that were a means to promote the use of sustainable transport modes. However, such an approach would need to be carefully considered and balanced against other planning objectives and policies, including the protection of the Green Belt (REP-072).

Conclusions on traffic issues

- 4.85 With regard to construction traffic I find that in view of the evidence on likely impacts resulting from construction traffic, the proposals put forward by the applicant to mitigate the effects of additional traffic through the submission of a traffic management plan within the CEMP are robust and should minimise the impacts as far as possible.
- 4.86 With regard to requests for additional car parking connected to this development, there was no survey evidence provided by any party concerning the number of cars likely to use the stations following the completion and on the introduction of additional

train services. The applicant considers that there would not be a significant increase in car traffic resulting from the scheme (APP-033 paragraph 7.1.3) and I have no evidence to contradict this. It is not possible therefore to quantify at this stage the optimum number of any additional car parking spaces that might be required. Importantly, there was no proposal for me to consider within the application to construct an extension to the car park at either Alvechurch or Barnt Green stations and so if I were of the view that additional car parking was essential in order for the project to proceed, the only alternative would be to recommend refusal of consent for the scheme.

- 4.87 It is clear that there are additional considerations to be taken into account in encouraging modal shift or an integrated transport system, such as the possibility of additional bus services or cycle routes, as well as station facilities aimed at influencing travel patterns to encourage train travel. The applicant's proposal to take part with other stakeholders in a station travel plan process supported by the Department for Transport, after completion of the Redditch Branch Enhancement Scheme, appears to me to be the appropriate response to an issue caused in part by the structure of the rail industry. In this way properly considered solutions could be brought forward to any car parking problem which might occur as a result of the increase in train services on this branch line.
- 4.88 In my view this approach would also accord with the relevant BDC development plan policy TR15 proposals which seek to improve car parking at railway stations where a demand is shown to exist.
- 4.89 I find the representations which sought additional car parking at affected train stations highlighted that there was no coordination with the Station Facility Owner (in this case London Midland) to determine potential land use impacts from the proposed infrastructure development. This is not required as part of the process undertaken by the applicant to achieve funding and support for a project such as this one to enhance existing railway infrastructure.
- 4.90 There is no National Policy Statement and no guidance on the extent to which station management issues - which are for the train operating companies - should be taken into account or weighed in the balance when assessing an NSIP. I consider it is relevant that a land use impact from potentially inadequate parking could arise on an increase in the train services. I have therefore considered the likely harm to be caused on the basis of the evidence provided.
- 4.91 I have concluded for all of the reasons set out in this section that it would be unreasonable to refuse consent for this scheme on

the basis that additional car parking at affected stations had not been provided.

- 4.92 I consider, however that it is reasonable to expect in connection with this development that works to the existing car park at Alvechurch station are carried out to improve the surface and the drainage, and other appropriate enhancements to that car park. The applicant would be carrying out work to Alvechurch station in any event, would be re-aligning the footpath which crosses the car park, and it is clear that improvement works would increase the capacity of the existing car park to its advertised capacity. The applicant, BDC and Alvechurch Parish Council have agreed the terms of requirement 8 (Car parking) in the DCO to bring this about.
- 4.93 I have no doubt that there is real concern among residents about parking issues at Barnt Green station but I do not consider these are sufficiently grave to necessitate a requirement in the DCO to deal with parking arrangements on a permanent basis at some distance from the development site. I believe the approval of the CEMP and in particular the measures proposed in the Traffic Management Plan which will form part of the CEMP will ensure that adequate management of temporary traffic related issues particularly during the 8 week blockade.

Footpath matters

- 4.94 The proposal includes the permanent extinguishment of sections of public footpaths (PD-018 article 9) in two locations: Alvechurch station and Butlers Wood Cottage.
- 4.95 At Alvechurch station the section of footpath 579(C) currently crosses over the single railway track at grade requiring users to check for oncoming trains before crossing.
- 4.96 At Butlers Wood Cottage there is no public footpath across the track, footpaths 522(C) and 523(C) terminating at either side of the railway track at this point. A section of footpath 523(C) amounting to 0.5m is to be extinguished because it is permanently required for the works to widen the track.
- 4.97 The Secretary of State may only include in the DCO a provision extinguishing public rights of way if he is satisfied either that there will be an alternative right of way provided or that an alternative right of way is not required²². The application provides for an alternative public right of way for the first footpath (which runs over land owned by the applicant and leased by the London Midland who have no objection to the provision of the alternative footpath (EV-016 Appendix 3)); the applicant's case is that the second is not required.

²² S136 PA 2008.

- 4.98 The Ramblers Association provided some information to the examination (REP-020), which led to the applicant submitting revised plans showing accurately the lines of the footpaths to be extinguished as they appear on the definitive map and statement (REP-074). The applicant also seeks to extinguish any public rights of way that may have been acquired in the route apparently used on the ground at Alvechurch station and so has included two sections for extinguishment, one as shown on the definitive map and one as used on the ground.
- 4.99 In addition to points of clarification on the route of the footpaths to be extinguished, the Ramblers Association argued that a diversion at Alvechurch station was not necessary for the scheme to proceed, and that the new route over the new footbridge would be substantially less convenient for walkers on the public footpath. With regard to the case that an extinguishment was not necessary, it seems clear that this would either require a level crossing to remain over twin tracks or for there to be within the scheme a proposal to construct an alternative crossing such as a footbridge on the line of the existing public footpath. It was proposed by the Ramblers Association that an alternative route using a ramp to access the road directly from the west platform would provide convenience to both footpath and station users and would also remove a risk to disabled passengers (see below at paragraph 4.109). The preferred alternative would involve the provision of a long ramp suitable for disabled persons. It would be a longer diversion than that proposed in the application but, it was claimed, it would overall be a helpful addition to the footpath network providing easier access from Station Road (REP-020).
- 4.100 Other interested parties had put forward similar proposals. In (REP-007) an alternative location for a new footbridge was proposed immediately adjacent to the road bridge carrying Station Road allowing a long ramp to descend to the west platform for the reason that the application proposal would not be acceptable for disabled passengers. It was claimed this would also benefit footpath users but if that route was not considered acceptable for footpath users, a second footbridge could be provided on the route of the existing public right of way.
- 4.101 The applicant had in fact considered a number of options before submitting the application (REP-065), including providing a bridge close to the Station Road overbridge. It stated that in order to be compliant with the Disability Discrimination Act 1995²³, very long ramps of between 95m and 102m would be required. A drawing of the standard ramp arrangement was provided (REP-063) as well as photographs of ramp arrangements at various other stations from which the potential

²³ The duties are now contained in the Equality Act 2010.

visual impact of such an arrangement could be judged (REP-064). The option chosen for the application submission avoids the need for ramps but requires remote monitoring of lifts.

- 4.102 WCC confirmed that if a proposal for a pedestrian access onto the highway at Scarfield Hill between the railway bridge and the canal bridge were put forward it would need to consider the merits of a access for train passengers and footpath users and whether the bridge footway would be adequate to accommodate users for the footpath (REP-069 and REP-034 at paragraph (2) WR15.02).
- 4.103 There were no representations made about the temporary suspension proposed of footpaths detailed in Schedule 4 of the DCO (APP-039) comprising sections of the footpaths at Alvechurch station (580(C)), to the south of Alvechurch station where it crosses a stream on the east side of the track (520(C)) and at Butlers Wood Cottage (523(C) and 522(C)).

Conclusions on footpath matters

- 4.104 In my view there is a strong case for supporting the extinguishment of footpath 579(C) where it crosses the track at Alvechurch station. It would not be acceptable to retain a level crossing across two tracks where trains travel in both directions and more often, because this would increase the risk for footpath users of the level crossing. The Office of Rail Regulation - February 2007 (APP-048) policy on level crossings states that all reasonable opportunities to remove or replace level crossings should be taken. The alternative way proposed by the applicant would be safer and there is no land ownership barrier to providing this. I acknowledge that the alternative proposed across the footbridge would be less convenient to users given the need to climb steps or wait for the lift, but the Secretary of State is not required to be satisfied that the alternative would be no less convenient than the extinguished path.
- 4.105 The alternative proposed by interested parties of a diversion using a ramp to access Station Road was not put forward by the applicant as a change to the application. In any event this would not have been supported by WCC as highway authority without further consideration of the effects on the highway network.
- 4.106 I therefore conclude that including the power to extinguish the section of footpath 579(C) detailed in the application, and amended during the course of the examination, satisfies the test in s136 of PA 2008 on the basis that an alternative is provided and for the reason that it is important to ensure no right of way exists at a level with the rail track. I recommend that the power to extinguish the footpaths at Alvechurch station is included within the DCO.

- 4.107 I conclude that extinguishment of footpath 523(C) at Butlers Wood Cottage should also be included in the draft DCO; the extinguishment merely reduces the length of the path by 0.5m. An alternative right of way in this location is not required because it does not join any other public right of way and I therefore consider the extinguishment provision satisfies the test in s136 of PA 2008.

Landscape and visual impact matters

- 4.108 The land immediately to the west of the existing track between Alvechurch station and Weights Lane is designated as a Local Landscape Protection Area in the Bromsgrove District Local Plan (2004). The development plan policies that apply (DS9, C4 and C16) are relevant. These policies indicate that if the scheme had a materially detrimental effect on the local landscape it would not normally be permitted.
- 4.109 The applicant submitted a Visual Impacts report and Landscape plan/strategy with its application documents (APP-034). The report followed an accepted methodology in assessing visual impacts of the scheme; WCC's Conservation and Landscape officer was consulted on the visual receptor viewpoint locations. Relevant landscape designations for the area are shown on a drawing at Appendix B and referred to in paragraph 3.22 of APP-034.
- 4.110 The extent of the permanent vertical and horizontal construction required for the scheme is shown in the section drawings (APP-015) and the works plans (APP-009). These include: the new footbridge with lift towers which are shown as extending 6m and 9m above the Alvechurch station platform level; OLEs which are 5.75m in height along the 3.2km of new railway line; and there are some significant cutting and embankment works. The applicant agreed during the examination to reduce the vertical limit of deviation upwards for this scheme from 3m to 1m (PD-018 article 6).
- 4.111 The Arboricultural Implications Report (APP-034 Appendix C) details full surveys carried out and provides at Table 5.1 details of trees affected by the project including the removal of 56 trees at trackside (mainly Common Ash and English Oak) to be removed as a result of the construction as well as the hedgerow species requiring removal. The final extent of arboricultural effects will not be known until detailed design stage at which point a plan indicating trees that need to be removed would be submitted for approval by BDC under requirement 13 (Trees) in the draft DCO.
- 4.112 The landscape strategy at section 5 of APP-034 provides for mitigation to minimise adverse impacts on visual amenity, landscape character and local biodiversity in compliance with

development plan policies²⁴ and this is shown on the landscaping plans including a list of species to be used in replacement planting.

- 4.113 BDC agreed (PD-004 paragraphs 4.14-4.17 and 5.1) with the findings of the Visual Impacts report and Landscape plan/strategy and that the requirements in the DCO would ensure appropriate mitigation for the visual impact of the scheme and would ensure appropriate safeguards for trees on the Order land including replacement of trees where appropriate.
- 4.114 Representations were submitted to the examination objecting to the visual impact on a property at Dellow Grove (RR-037, REP-013) resulting from the removal of trees and vegetation.
- 4.115 Other representations sought an increase in the landscaping proposed to mitigate the impact of the alterations to Alvechurch station and the lift towers in particular (REP-015). This representation was expanded upon in the OFH (EV-005) in order to explain the proposal to plant an area of woodland to the west of the station on land proposed to be acquired on a temporary basis for a construction compound. It was stated this would be a double benefit: providing adequate screening for the visual impact of an alien structure in the landscape and Green Belt location as well as providing an opportunity to enhance biodiversity; EV-009 sets out the policy support for this. The representation claimed that the mitigation was not adequate for development in the Green Belt which would be visible from publicly accessible locations including the Worcester and Birmingham Canal towpath.
- 4.116 The Visual Impact report and Landscape plan/strategy assessed the significance of the effect on the landscape character at Year 1 and at Year 15, by considering the magnitude of the change in conjunction with the receptor's sensitivity to change. The receptors with a close and direct view of the station, new platform, footbridge and OLE portals (Station Road and from the public right of way at Alvechurch station) were assessed to have a moderate adverse effect at Year 15. The same assessment was reached for the residents of Butlers Wood Cottage. The significance of the effects on the landscape character elsewhere were all assessed for Year 15 as either being neutral or slight adverse (APP-034 Table 4.2).
- 4.117 A number of representations were submitted seeking changes to the design and layout of elements of the Alvechurch station arrangements, in particular of the footbridge. This is considered below at paragraph 4.126 - 4.135 and my views on those

²⁴ C17 Bromsgrove District Local Plan, CTC.5 Worcestershire Structure Plan.

aspects of the proposal are taken into account in the following conclusions on the visual and landscape impact.

Conclusions on visual and landscape impact issues

- 4.118 There would be a lasting effect of the proposed scheme on the landscape character through which the proposed scheme passes, which in my judgement has been accurately assessed overall as being slight adverse after the mitigation proposed by the landscape plan/strategy has had time to mature.
- 4.119 Inevitably this means that the effects would be of greater negative effect in the years before this, and there would also be a greater effect on those with close views of the station or track.
- 4.120 The temporary impact during the construction period will be greater still due to the scale of the construction compounds and removal of vegetation to accommodate them. However the effects would be temporary and I have therefore accorded little weight to them in the overall balance.
- 4.121 There is clearly a desire in policy terms to enhance opportunities for biodiversity which could be achieved through planting a new area of woodland, if done for that purpose, to the west of Alvechurch station. This might also in due course screen the lift towers and footbridge to a greater extent than the 2m landscaping buffer proposed as part of the landscaping strategy and would fit with the character of the landscape in this locality which is populated by small areas of woodland. Had the land been in the control of the applicant, it could have proposed this without the need for amendments to the application because planting would not have comprised development requiring consent.
- 4.122 The relevant plot of land is not owned by the applicant and is proposed to be subject to compulsory acquisition powers for temporary possession to accommodate the construction compound off Station Road. The applicant did not propose that I should examine as part of the application whether taking the land permanently through compulsory acquisition powers was justified for this purpose and the landowner concerned has not had an opportunity to object or agree to such proposal. I am therefore unable to recommend that any additional planting should be provided to the west of Alvechurch station as there is no certainty that it could be achieved. Furthermore, I place some weight on BDC's acceptance that the landscaping proposed in the application is sufficient to mitigate the permanent effects of the scheme.
- 4.123 A scheme such as this one which requires substantial engineering works in the open countryside, and in some places in close proximity to residential areas, is bound to have an adverse

effect on the landscape character for a number of years until screening from replanting has matured and I accord this matter significant weight. It is also the case that the Redditch branch line is presently visible from some distance in this area of Green Belt land and so the new length of track is not introducing for the first time in this location OLEs or embankments to accommodate the track, for example. The most significant change is the introduction of a new footbridge and lift towers. The alternative solutions proposed by interested parties to providing access to the west platform are not acceptable in my view: retaining a level crossing across a double track would be contrary to established safety policies (REP-048), and in my judgement the proposal to introduce a long ramp from the west platform would not be an improvement in terms of visual impact on the character of the local landscape, having considered evidence of potential ramp design (REP-045 and REP-046).

- 4.124 For the reasons stated above I do not consider that the impact on the Local Landscape Protection Area would be materially detrimental and I note that BDC did not object to the scheme's landscape and visual impact in its LIR, acknowledging the assessment as neutral to slight adverse on more distant visual amenity receptors (REP-025).
- 4.125 In light of the above matters and taking into account the professional assessment undertaken by the applicant, I consider the changes brought about by the scheme are accurately described as having slight adverse effect overall on the landscape character in the medium to long term and therefore I conclude that this impact would not be sufficient reason in itself to refuse consent for the scheme.

Station design and equality issues

- 4.126 A number of interested parties expressed strong objections to the new footbridge and lift towers at Alvechurch station. The primary reason was that they considered the arrangement would cause disabled persons travelling from or to the west platform unacceptable difficulties in the event of lift failure (RR-007, REP-007, REP-019). Allied to this was a view that a better arrangement for both station and public footpath users would be to have a long ramp directly from Station Road (REP-020, and see paragraph 4.84 above).
- 4.127 The applicant responded to my question asking for a response to the Ramblers Association proposal for a ramped exit at Scarfield Hill by highlighting the adverse visual impact of a long ramp and quoting Department for Transport advice²⁵ (the DfT Code of Practice) that long ramps are often unsuitable and 'can cause

²⁵ Code of Practice 'Accessible Train Station Design for Disabled People' Version 03, 1 November 2011

significant problems for people with walking difficulties and wheelchair users'. (REP-057 paragraph 6.3).

- 4.128 The applicant also stated in answer to a further question from me that, regardless of the fact that Alvechurch station is unstaffed, the proposal for lift access will adhere to the DfT Code of Practice (in particular with paragraphs 29 and 30, Section F1. (Unobstructed Progress – general) and Section R2. (Lifts – Lift Emergencies at REP-069 paragraph 5.1), and on that basis it will have taken “reasonable steps” to provide obstacle free access to the new platform. By complying with the DfT Code and managing the effects of lift failure as set out in REP-069 paragraph 5.2²⁶ the applicant considers its proposals for disabled access comply with the requirements of the Equality Act 2010 because they represent a proportionate means to achieve the legitimate aim of increasing access to the station.
- 4.129 Representations were also received seeking improvements to the disabled access provisions at Barnt Green station in connection with this scheme (REP-014) and the applicant responded that this was not a matter for consideration in the Redditch Branch Enhancement Scheme application (REP-034 at paragraph WR 6.08). Barnt Green station is not within the development site boundary and the management of the station is under the control of the train operating company.

Conclusions on station design and equality issues

- 4.130 I have considered carefully this scheme in the light of the Public Sector Equality Duty (PSED) and protected characteristics of disabled people. I asked questions (DEC-007 questions 5.1 and 5.2) of the applicant to establish whether the arrangements for access to the new platform at Alvechurch station would be appropriate for disabled passengers in view of duties imposed in legislation and taking account of relevant published guidance.
- 4.131 I do not consider that the provision for disabled access at a station at some distance from the proposal in this application could reasonably be related to the grant of any consent for this scheme and therefore conclude that improvements to the disabled access (which may well be beneficial for disabled people) at Barnt Green station should not be required as part of this scheme.
- 4.132 It is clearly not ideal to expect disabled passengers who alight at Alvechurch station from a train travelling south to wait for up to 30 minutes (or longer if emergency services need to be called in

²⁶ This includes remote monitoring of lifts and a standard 30 minute response time for the emergency maintenance contractor after which period emergency services are called, and train operating company staff informing passengers travelling north from Redditch not to alight on the train, or if on a train travelling south to proceed to another station. A disabled passenger would be conveyed to their destination by taxi if they were unable to travel from Redditch to Alvechurch by train REP-069 at 5.2.

line with procedures) for help to arrive, in the event that the lifts stop working and they are unable to reach the station exit. However, I am satisfied that proper consideration has been given to the issue and that the solution provided is a proportionate one and in compliance with relevant guidance.

- 4.133 With regard to the design of the footbridge and lift towers, I consider that the alternative proposal of a long ramp would have a more severe adverse impact on the local landscape (see paragraph 4.123 above). In coming to this view I have taken into account that mitigation for the visual impact of the proposed footbridge is provided for in the landscape strategy and plans and secured through requirements in the DCO.
- 4.134 In the event the Secretary of State wished to grant consent for this scheme, taking into account the issues set out in this section I conclude that the design of the development at Alvechurch station put forward by the applicant is acceptable and that public authority duties under the Equality Act 2010 would be met in respect of station access arrangements.
- 4.135 I have also considered whether other protected characteristics defined in the Equality Act 2010 are engaged in respect of the scheme as a whole; no points were raised on other protected characteristics by any parties in the examination and I am satisfied that there are no additional issues and no other circumstances arise in this case which would also engage the PSED.

5 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

- 5.1 My overall conclusion on the case for development consent for this scheme²⁷ is based on an assessment of prescribed matters and those which I consider are both important and relevant to that decision, as well as the strong support for the proposal in both LIRs submitted to the examination²⁸.
- 5.2 In chapter 2 of this report I set out the policy context which I consider is both important and relevant to my assessment of the scheme, and have referred to specific parts of relevant policies in concluding on issues examined in chapter 4.
- 5.3 Having examined issues with potential environmental impacts in some detail I am satisfied that the proposed development does not comprise environmental impact assessment development requiring the submission of an environmental statement before granting consent for the proposal²⁹.
- 5.4 I have set out the reasons for my conclusions on each of the matters in chapter 4; my conclusions on the main issues in summary are:
- there is a clear need for the scheme
 - the need for the scheme comprises very special circumstances which clearly outweigh the harm to the Green Belt
 - the nature conservation impacts of the proposal have been adequately assessed and the mitigation proposed for protected species and their habitats and other nature conservation interests (including reinstatement of trees and hedgerows) will adequately mitigate the adverse impacts
 - construction and operational noise impacts are not such that consent should be refused, and the requirements which can be reasonably included in the DCO would ensure that the impact of construction noise is adequately controlled
 - construction traffic impacts are temporary and will be satisfactorily controlled through requirements in the DCO
 - any impacts on car parking at or near affected stations will be adequately controlled during the construction period through requirements in the DCO; a requirement requiring work to Alvechurch station car park is reasonably related to the proposed development and is included in the DCO; in the longer term the need for additional parking at train stations in the locality is a matter for all relevant parties to address outside the controls under the DCO
 - footpath extinguishments are acceptable

²⁷ Not here referring to the case for the inclusion of compulsory acquisition powers in the DCO.

²⁸ As required by s105 PA 2008.

²⁹ Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)

- The landscape and visual impacts of the scheme are not such as to merit refusing consent and the mitigation proposed to alleviate the harm will be satisfactorily achieved by requirements in the draft DCO
- The design of new elements at Alvechurch station is appropriate taking into account the need to minimise the landscape and visual impact of the scheme and at the same time to provide a proportionate solution to duties under the Equality Act 2010 in relation to disabled access

5.5 In conclusion therefore, balancing the adverse impacts of the scheme against the need for the project to be delivered and other benefits of the scheme, I consider there is a clear justification in favour of granting development consent for the Redditch Branch Enhancement Scheme.

6 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 6.1 The DCO includes provisions which would authorise the applicant to compulsorily acquire land or rights in land, to interfere with or extinguish existing rights in land and to create new rights in land³⁰.
- 6.2 The application also seeks powers to make temporary use of land (to the exclusion of all others) for the construction of the project, and after giving notice in accordance with article 24, for the temporary use of land for maintenance of the authorised development.
- 6.3 The whole of the Order land within the Order limits³¹ is proposed to be subject to powers of compulsory acquisition. Much of the Order land is existing operational land owned by the applicant and used for the existing Redditch branch line; powers are sought to extinguish rights over this land. Land currently in the ownership of other parties over which compulsory acquisition powers are sought is primarily to accommodate the full extent of the second new track, including for example, works to embankments or culverts. Land is also required to provide mitigation for adverse impacts of the proposal including on protected species, and to provide new rights of access. Land is also required for a temporary period for construction compounds and haul roads.
- 6.4 The details of the land and interests to be acquired are set out in and BoR (APP-044) and shown on the land plans (APP-008) submitted with the application, both of which were updated during the examination (PD-026 and PD-103 - PD-110 respectively).
- 6.5 The BoR provides details of 71 plots of land subject to compulsory acquisition powers. The powers would authorise:
- The acquisition of the freehold and extinguishment of all rights in 36 plots (approximately 2.28ha)³²
 - On the appropriation by the applicant for the purposes of the authorised development, the extinguishment of all rights in 13 plots already owned by the applicant (approximately 5.86ha)³³
 - The creation of new permanent access rights in 5 plots³⁴
 - Temporary possession of 17 plots of land (approximately 7.56ha)³⁵

³⁰ Contained in Part 5 of the draft DCO.

³¹ Both terms are defined in article 2 of the DCO.

³² Plots 3, 9, 12, 14, 15, 16, 17, 20, 21, 23, 26, 34, 35, 36, 38, 39, 42, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 63, 68 and 69.

³³ Plots 1, 4, 6, 7, 22, 27, 29, 31, 33, 37, 64, 67, 70.

³⁴ Plots 40, 43, 55, 65 and 66.

³⁵ Plots 2, 5, 8, 10, 11, 13, 18, 19, 24, 25, 28, 30, 32, 41, 47, 56 and 71.

- In respect of 19 plots the interests of WCC in public highway or public footpaths are excluded from the powers of compulsory acquisition³⁶
- 6.6 Statutory undertakers' land or rights in land are affected by the compulsory acquisition powers sought. These bodies are listed in the non-statutory schedule to the updated BoR (PD-026) and are also identified as required in the BoR³⁷ by reference to specific plots of land and the nature of the land interest held. Three of these statutory undertakers submitted representations (REP-022, RR-025, RR-013) on the application for development consent.
- 6.7 A process to examine issues on behalf of the relevant Secretaries of States in relation to s127 of PA 2008 began on 22 March 2013 for the Canal and River Trust (CRT) (PD-048); on 27 March 2013 for Western Power Distribution (WPD) (PD-063); and on 27 March 2013 for National Grid Gas plc (National Grid)(PD-082).
- 6.8 By the end of the examination all three statutory undertakers had withdrawn their representations (PD-059; PD-077 and 078; PD-099). There is therefore no requirement for s127 certificates in this case³⁸.
- 6.9 The purpose and justification for the compulsory acquisition powers sought was set out in a Statement of Reasons (APP-042) submitted with the application for development consent and supplemented in answer to my questions (REP-057), during the Compulsory Acquisition hearing in the examination (EV-017) and by documents submitted for that hearing (EV-016) which detail the specific purpose of seeking powers over specific plots of land.

The applicant's case for compulsory acquisition

- 6.10 The applicant considers (APP-042 section 6) that all of the land which is proposed to be subject to compulsory acquisition powers is either:
- Required for the development to which the development consent relates³⁹; or
 - Is required to facilitate or is incidental to that development⁴⁰

³⁶ Plots 4, 5, 7, 9, 10, 11, 12, 13, 14, 22, 23, 24, 25, 30, 32, 36, 66, 70 and 71.

³⁷ British Telecommunications PLC is stated by the applicant to have cables supported by a pole at Butlers Wood Cottage (answer to my question 1.7 (REP-058)) but is not listed in the BoR as having a relevant right in land. The pole is to be 'repositioned slightly to allow for construction of the works'. British Telecommunications PLC did not make a representation on the application. Severn Trent Water Limited is not included in the BoR, nor did it make a representation on the application.

³⁸ Currently under s127 of PA 2008 a Secretary of State certificate could be required before including a provision authorising compulsory acquisition of a statutory undertakers' land.

³⁹ S122(2)(a).

⁴⁰ S122(2)(b).

- 6.11 The specific purposes for taking each plot of land (or overriding existing rights in land) are set out in updated form in EV-016, all of which relate to the construction of the railway or the associated development. The overall justification for the requirement is stated to be that without the land "the Development cannot take place". The need for compulsory acquisition is "to ensure that the Development can be delivered, and to meet the Department for Transport's requirements in relation to timely provision for the Development" (APP-042 section 6). On this basis the applicant considers it has met the conditions in s122 of the PA 2008.
- 6.12 The applicant states it has complied with paragraph 20 of relevant guidance⁴¹ concerning the need to demonstrate there are no reasonable alternatives to compulsory acquisition on the following basis:
- there is no practicable alternative location for the development as it is the dualling of an existing railway (APP-042 and APP-022 paragraph 2.2 (Consultation Pack for s42 Consultation regarding options considered)); and
 - the applicant has continued to negotiate with all landowners in an attempt to avoid the use of compulsory acquisition powers wherever possible (EV-016).
- 6.13 The applicant stated that the extent of the land proposed to be compulsorily acquired was the minimum; the limits of the land "have been drawn as tightly as possible at this stage to avoid unnecessary impacts on the owners of the land" (APP-042 paragraph 6.8). The land plans (PD-104 - PD110) and the works plans (APP-009) demonstrate that the land proposed to be taken is required for the works.
- 6.14 In answer to my question set in the agenda for the compulsory acquisition hearing (EV-015) regarding the justification for the choice of location and size of the construction compounds, the applicant explained the specific uses to which each of the three compounds would be put at either end and at the mid way point of the 3.2km of works, and the need for acceptable access points at the locations identified (EV-016 paragraph 4.3).
- 6.15 Evidence was also provided to satisfy guidance that there is a reasonable prospect of funds being available⁴² (APP-043). In answer to my questions the applicant confirmed that the Redditch Branch Enhancement Scheme is fully funded by Government funding allocated in the Control Period 4 funding settlement and that it is not reliant on any further Government funding or any other source of funding to pay for the capital works and the land acquisition costs for this scheme (REP-057).

⁴¹ DCLG Planning Act 2008 Guidance related to procedures for compulsory acquisition.

⁴² Paragraph 21 DCLG Planning Act 2008 Guidance related to procedures for compulsory acquisition.

- 6.16 With regard to whether there is a proportionate interference or taking of land required to facilitate the development or as incidental to it, in setting the agenda for the compulsory acquisition hearing (EV-015) I asked that the applicant provide further justification for the power to override rights on land already owned by the applicant as operational land for the existing branch line. The applicant responded in the hearing (EV-017) that this land is included because of the potential for third party claims that may arise as a result of changes to the existing railway. Most of the rights in the applicant's land are held by statutory undertakers. It is not the applicant's intention to disrupt or extinguish those rights but it requires such powers to ensure it is certain the project could proceed (EV-016 section 4 and EV-017). I discuss this further in my conclusions below.
- 6.17 With regard to the effect on statutory undertakers' interests in land the applicant's position is that it would rely on powers within the DCO only if removal of statutory undertakers' apparatus was absolutely necessary and where existing agreements with statutory undertakers were not sufficient to enable the applicant to meet its timetable for completing the project. In that event the protective provisions in Schedule 10 of the DCO would protect the undertakers' positions and the applicant would re-grant similar rights on similar terms to those held by the affected statutory undertakers (EV-016 paragraph 8.2).
- 6.18 In answer to my question (DEC-004) at paragraph 7.1 the applicant set out details supporting the necessity for powers of compulsory acquisition affecting statutory undertakers' relevant rights and relevant apparatus as defined by s138 of PA 2008. In summary the applicant states that for four of these parties (CRT, WPD and British Telecommunications PLC and National Grid) it is likely or clear that some interference with rights or apparatus will be necessary to carry out the development. The fifth, Esso Petroleum Company Ltd, has relevant rights on plots of land proposed to be compulsorily acquired and the applicant considers it needs to be certain it can extinguish or remove them if they were to interfere with carrying out the development. It should be noted in relation to s138 of PA 2008 that any representations made by parties to which s138 applies had been withdrawn before the end of the examination.
- 6.19 The condition to be fulfilled under s122(3) of PA 2008 is that there is a "compelling case in the public interest for the land to be acquired compulsorily". The applicant states that without compulsory acquisition powers, the project would not proceed (APP-042) and it relies on its case that there is a need for this development to bring about service capacity improvements and to deliver the Government's objective to encourage sustainable modes of transport (see paragraphs 4.4-4.16 in chapter 4 of this report).

Objections received to compulsory acquisition proposals in the application

- 6.20 Five objections to compulsory acquisition proposals were received from affected persons: CRT, WPD, National Grid, Gallagher Estates Ltd and Mr and Mrs Franklin.
- 6.21 Two additional objections were received from Mr and Mrs Critchlow and from Mr Walker about the disturbance that would be caused to them from the location of two different construction compounds close to their homes; they have interested party status by virtue of potentially having a 'relevant claim'⁴³.
- 6.22 One interested party, Dr Ul-Haq, made oral representations in support of the proposal at the OFH and the CA hearing with specific comments on compulsory acquisition powers within the DCO; this is dealt with in chapter 7. He also made comments on procedural matters relating to compulsory acquisition at the preliminary meeting; these were addressed in that meeting.

Canal and River Trust (CRT)

- 6.23 CRT submitted a written representation (REP-022) because it had concerns about the operational difficulties that could be caused by the compulsory acquisition proposals and because it sought protective provisions within the DCO.
- 6.24 CRT negotiated the terms of protective provisions which are in agreed form in the DCO and subsequently withdrew all representations on the development consent application (PD-059).

Western Power Distribution (WPD)

- 6.25 WPD submitted a written representation (REP-021) because it wished to reserve its position in the event that the proposals in the application were modified during the examination in a way which would mean satisfactory mitigation from altering the configuration, locations and routing of its equipment could not be achieved.
- 6.26 WPD subsequently withdrew all representations on the development consent application (PD-078 and PD-079).

National Grid Gas plc

- 6.27 National Grid submitted a relevant representation (RR-013) because it owns and operates low and high pressure gas distribution pipelines affected by the proposed development.

⁴³ Under s102 of the PA 2008 because they were notified under s56(2)(d).

- 6.28 During the examination National Grid negotiated terms of a protective provisions agreement with the applicant and subsequently withdrew all representations on the development consent application (PD-099).

Gallagher Estates Ltd

- 6.29 Gallagher Estates Ltd have an option to purchase two plots (28 and 30) one of which is required for the temporary construction compound at Weights Lane. This land amounts to approximately 2.6ha. The company submitted a representation objecting to the temporary possession of the land to be exclusively possessed for use as a construction compound and a section of haul road, on the basis this would conflict with its plans for development of the Brockhill East Strategic Site which is needed to deliver a proportion of Redditch's future employment and housing needs.
- 6.30 Planning permission was granted in July 2012 (subject to completion of s106 agreement) for mixed use development of up to 200 dwellings, 5,000sqm (gross) Class B1 office floorspace with associated open space and access arrangements; the land in question is authorised to be developed as informal open space and a balancing pond as part of the mixed use development (EV-004).
- 6.31 Gallagher was in negotiations with the applicant during the course of the examination to relocate the temporary compound and haul road to the north of land required for the mixed use development and outside the Order limits.
- 6.32 No revised proposals were submitted during the examination by the applicant as a proposed change to the application and Gallagher Estates did not withdraw its objection.
- 6.33 No details were provided by Gallagher Estates of the extent of the harm that would result from not being able to proceed with its development during the applicant's exclusive possession of it during the construction period for the Redditch Branch Enhancement Scheme.

Mr and Mrs Franklin

- 6.34 A representation was submitted on behalf of Mr and Mrs Franklin (RR-036) part owners and occupiers of Butlers Wood Cottage (plots 32, 34, 35, 36, 38) objecting to various aspects of the development including the impact of the location of the haul road very close to their property. Plot 32 would be subject to temporary possession by the applicant and the remainder are required permanently. In addition permanent rights of access are sought over plots in which the Franklins also have rights (plots 40, 55, 65 and 66).

Mr and Mrs Critchlow and Mr Walker

- 6.35 Mr and Mrs Critchlow and Mr Walker were concerned about disturbance in general and in particular about 24 hour working at the Grange Lane construction compound and about the location of the Weights Lane compound respectively.

The Applicant's Response to the outstanding objections***Gallagher Estates Ltd***

- 6.36 The applicant's position is that it will continue to negotiate with the landowner of plot 30 and with Gallagher Estates (the owner of an option to purchase the land) and that it would be prepared to relocate the construction compound if landowners' consents are obtained. In the absence of agreement being reached on an alternative location for the construction compound, the applicant confirms it continues to need the powers to compulsorily acquire the land subject to the Gallagher Estates objection (plots 28 and 30) in order to carry out the project.
- 6.37 The applicant stated that the landowner of plot 30 had not objected to the proposed temporary possession of its land (EV-017).

Mr and Mrs Franklin

- 6.38 The applicant set out the latest position on negotiations in EV-016 at paragraphs 6.3-6.9 and Appendix 8. It seeks to provide mitigation for the impact of the construction works. It maintains the compulsory acquisition powers in relation to the plots in which Mr and Mrs Franklin have an interest are essential to deliver the project.

Mr and Mrs Critchlow

- 6.39 The applicant responded in (EV-017) with information on noise assessments and reiterated their commitment to mitigate the impact as far as possible through controls in the DCO, in particular the need to seek s61 Control of Pollution Act 1974 consent from BDC before commencing work.

Conclusions on the case for compulsory acquisition powers

- 6.40 I have considered the application documents and all of the representations submitted in the examination on compulsory acquisition matters in the light of sections 122 and 123 of the PA

2008, relevant guidance, the Regulations⁴⁴ and the Human Rights Act 1998.

- 6.41 In this case section 123 of the PA 2008 is satisfied because a request for the compulsory acquisition of land was included in the application for development consent.
- 6.42 Section 122 of the PA 2008 requires that the Secretary of State is satisfied the land is required and that a compelling case in the public interest has been made for the compulsory acquisition of that land. In determining whether that compelling case exists I must balance the public interest against private loss.
- 6.43 In order to conclude that a compelling case has been made for compulsory acquisition, I must also be of the view that development consent should be granted for the proposal because the compulsory acquisition powers are required to bring about that development.
- 6.44 I have concluded that development consent should be granted for the reasons set out in chapters 4 and 5. One of the reasons given was that in my view there is a clear need for this project to be delivered. This reason is also very important to the applicant's case that there is a compelling case in the public interest to include compulsory acquisition powers in the DCO as in the absence of these powers the project will not be delivered.
- 6.45 I am satisfied that all of the land subject to the proposed powers of compulsory acquisition is required to carry out the development having considered in particular the land plans (PD104-PD109), the book of reference (PD-026), the description of the authorised development in the draft DCO (PD-018) and the works plans (APP-009 and PD-113).
- 6.46 It is possible that before the start of the project works, the applicant will have concluded agreements with all relevant landowners meaning that it will not need to use powers of compulsory acquisition. However there is no guarantee that this will occur.
- 6.47 I am clear that the fact that land agreements might be in place in due course does not take away the need for the powers in the DCO because the project must be planned and carried out without risk of one or more parties holding it up or preventing it from being delivered.
- 6.48 I have carefully considered the rights under the Human Rights Act 1998 (Convention rights Article 1 of the First Protocol, Article

⁴⁴ The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

6 and Article 8) of those affected by the proposed compulsory acquisition.

- 6.49 The Franklins are the only individuals whose land will be taken under the powers in the DCO who maintained an objection at the end of the examination. The interference in the rights under Article 1 of the First Protocol to the peaceful enjoyment of their property resulting from the use of the compulsory acquisition powers, will not in my view last beyond the construction period because the land to be taken permanently is a small area at the edge of the Franklins' property and currently adjacent to the existing railway line. I consider therefore that the public interest in bringing about this project would be a proportionate interference with the rights protected by the Human Rights Act 1998 in this case.
- 6.50 Two further objections from Mr and Mrs Critchlow and from Mr Walker were from persons whose land interests are not be acquired but who fall into the category of persons who could potentially have rights to compensation if they had a 'relevant claim'.⁴⁵ The objections concerned the effect on their amenity and in particular, noise at night time from activities in the construction compounds at Grange Lane and the location of the compound in Weights Lane.
- 6.51 Although it is possible that at times there will be an adverse impact on their living conditions, it will be for a temporary period, and will be mitigated as far as possible by controls in the DCO. I therefore consider that use of the compulsory acquisition powers is justified as a proportionate interference with the human rights of the affected individuals.
- 6.52 Gallagher Estates' objection concerns potential conflict that might arise as a result carrying out the mixed use development at a time when the land is being used by the applicant to carry out the construction of the new rail loop.
- 6.53 I consider that it would be preferable if the construction of the Redditch Branch Enhancement Scheme did not cause any delay in carrying out the mixed use development for which planning permission has been granted. However, I do not consider that this objection is sufficiently strong to recommend the affected plot of land is removed from the BoR and Schedule 8 of the draft DCO; noting in particular having been given a number of opportunities, Gallagher Estates did not state that their proposed development would in fact be delayed by the railway construction project. Their representation stated that the proposal 'may prejudice the speed of delivery' of the mixed use development and also acknowledged 'the importance of

⁴⁵ S57(6) of PA 2008 concerning potential claims under s10 Compulsory Purchase Act 1965 and Part 1 of the Land Compensation Act 1973.

enhancing the railway at this location' (REP-017). The need for the Redditch Branch Enhancement Scheme is clear and if authorised, its delivery should be secured through the possession of land for the Weights Lane construction compound by compulsion if necessary.

- 6.54 A question remains however, whether it is essential to use powers of compulsory acquisition to override existing rights in land that is already owned by the applicant. The applicant stated at the CA hearing (EV-017) that although it has perhaps taken an overly cautious approach to ensuring all possible rights could be overridden, if any unknown ones arose when carrying out the project, the power to extinguish such rights is a power usually included in similar orders for rail projects in order to ensure the project can proceed.
- 6.55 The PA 2008 provides statutory authority for nuisance caused by carrying out the development or by doing anything else authorised in the DCO⁴⁶. Section 152 provides for compensation for those whose land is injuriously affected by such nuisance. The applicant in the CA hearing stated that it had considered these provisions of PA 2008 and determined that because any rights that might be affected in this way would give rise to a 'compensatable interest' it would be preferable to include its own operational land plots in the BoR because in that way it would be clear which land was affected by the extinguishment of rights. The extinguishment of the rights proposed in article 18(3) would take effect on the date the applicant appropriates the land for the purpose of this project and in that way it would not be subject to any delay during the execution of the project if a third party discovered it had a right and sought to assert its rights.
- 6.56 It is my view that it would not be in anyone's interests, including those who would be affected by adverse impacts during the construction period, to allow a situation where the project was held up by the potential for legal proceedings resulting from a third party claim. I consider that providing clarity through the inclusion of the applicant's land in the book of reference (EV-017) when combined with the power in article 18(3) of the DCO which is drafted to provide for extinguishment of all private rights over this land but limited to rights which are '..required for the purposes of this Order', is therefore appropriate. Article 18(5) provides that entitlement to compensation for extinguishment or temporary suspension of such rights is in accordance with s152 of PA 2008. The applicant's land which is affected by this power is required to carry out the development and I therefore consider this is sufficient to make a compelling case for compulsory acquisition.

⁴⁶ S158 of the PA 2008.

Recommendation on including compulsory acquisition powers in the DCO

- 6.57 For the reasons set out in this chapter I am satisfied that the case has been made that all of the plots included in the BoR and land plans are required either for the development or to facilitate, or as incidental to it.
- 6.58 I am also of the view that the compelling case in the public interest has been made out: there is a clear need for this project to proceed, its delivery would be jeopardised in the absence of the compulsory acquisition powers contained in the draft DCO, and the interference with the persons and affected land interests is proportionate to the benefits that will be brought about by the development.
- 6.59 I recommend that the compulsory acquisition powers included in the draft DCO in respect of the land detailed in the BoR are retained in the DCO if the Secretary of State is minded to grant development consent for this project.

7 THE DEVELOPMENT CONSENT ORDER

- 7.1 The applicant submitted five revisions of the DCO during the course of the examination. The revisions were to accommodate changes resulting from interested party written or oral representations, for example to include protective provisions for statutory undertakers or requested changes to requirements. The revisions were also provided in response to my written questions on drafting or seeking justification for the powers sought (DEC-004 and 005) or in response to my questions raised at or following the CA and DCO hearings (EV-017 and EV018; EV-019 and EV-020 and DEC-011), or to comply with the examination timetable.
- 7.2 I am satisfied that the description of the authorised development in Part 1 of Schedule 1 comprises development⁴⁷ falling within the terms of s25 and s115 of the Act and further that the provisions and requirements in the draft DCO fall within the terms of s120 of the Act.
- 7.3 I report in this chapter on any points in the draft DCO which were contentious, or to explain any significant changes in the draft DCO submitted with the application resulting from the examination. If I have made no mention of particular provisions, requirements or schedules in the DCO the Secretary of State can be clear that I am satisfied the draft DCO provisions, requirements and Schedules are appropriate for a railway infrastructure project similar to this one and as amended following the examination generally follow modern drafting guidance (see below at paragraphs 7.21-7.87 and Appendix F of this report). The reasons for seeking the powers in my view have been adequately explained in the EM updated and submitted at the end of the examination (PD-021).
- 7.4 I recommend that should development consent be granted for the Redditch Branch Enhancement Scheme the DCO attached in Appendix F is appropriate.

DCO provisions

Article 6

- 7.5 The applicant reduced the vertical limits of deviation from 3m to 1m as a response to my question (DEC-004 question 14.5) asking whether 3m was essential in view of the concern expressed about the visual impact of the footbridge and lift towers in particular. The EM confirms that in the circumstances of this case where new rail assets will be aligned with the existing railway and where no overbridge replacements are

⁴⁷ As defined by s32 of the Act.

proposed a 1m upwards deviation from submitted drawings is acceptable (PD-021).

- 7.6 The horizontal limits of deviation to apply are shown on the works plans (APP-009 and PD-113) (article 6(a)) and the authorised vertical deviation is from the levels shown on the sections (APP-015) (article 6(b)).
- 7.7 The limits of deviation do not apply to associated development listed in Part 1 of Schedule 1, but not contained within numbered works, for the reason that such development is not tied to a particular works plan and could take place wherever appropriate but always within the Order limits (REP-079).

Article 9

- 7.8 The effect of paragraphs (6) and (7) of this article is that if the applicant starts that process it must pursue compulsory acquisition of land over which there is a public right of way, so that no other landowner would have a public right of way imposed on it in the event that the right of way was revived under section 136(5) (PD-021).

Article 16

- 7.9 Dr ul-Haq, an interested party, objected to the time limit of 5 years in which the applicant would be entitled to exercise compulsory acquisition powers (REP-082). This was on the basis that he supported the scheme and considered the applicant should be required to bring it forward within a shorter timescale and that if necessary the applicant could seek a renewal of powers if they had lapsed.
- 7.10 The applicant responded that the period was appropriate to ensure that in the event of unforeseen delays in starting the project the authorisation would remain in place. It confirmed it intended to start the project in December 2013.
- 7.11 I recommend that 5 years is an appropriate time period for the exercise of these powers. There is no simple procedure in which a renewal of lapsed powers could be obtained. There would be significant detriment to the objectives of this project if it were unable to proceed in the event unforeseen circumstances delayed its start. The blight provisions⁴⁸ in my view adequately provide for harm suffered to landowners resulting from any delay within the 5 year period.

⁴⁸ Schedule 13 of the Town and Country Planning Act 1990 as amended by s175 of the PA 2008.

Article 17

- 7.12 The applicant has added a sub-paragraph (7) to ensure that if powers in the DCO are transferred to statutory undertakers if those newly acquired rights are to divert, replace or protect statutory undertakers' apparatus, the applicant will pay any compensation resulting from the exercise of that power if the statutory undertaker fails to pay. This is subject to any private agreement reached between the undertaker and the applicant (sub-paragraph (8)).

Requirements

- 7.13 Specific references are given where relevant in chapter 4 to the requirements which are proposed in order to mitigate the adverse impacts of the development.
- 7.14 In relation to the matter of dust and fugitive emissions which I did not consider to be a main issue for the examination, the Health Protection Agency requested (REP-052) that they be consulted by BDC in the approval of the CEMP under requirement 4. I recommend that requirement 4 is amended to require that the relevant planning authority consults the Health Protection Agency prior to approving the CEMP.
- 7.15 In my view the requirements are necessary, related to the development proposed to be carried out, enforceable and reasonable in all other respects. I have recommended some minor alterations to drafting, in the case of requirement 15 to ensure enforceability of the maintenance of temporary fencing, and otherwise to ensure modern drafting is applied to the requirements in the DCO. I consider the requirements are drafted in a clear manner, and in a style generally accepted as appropriate for planning conditions (and therefore for requirements in a DCO) and provide consultation with appropriate bodies and appropriate approval of further details in connection with carrying out the development.
- 7.16 In coming to this view I have taken into account the comments from interested parties on drafting of requirements (particularly in SOCG submitted by the EA, NE and WCC (PD-003, PD-002, PD-001 and in representations concerning approval of amended requirements) all of whom have roles as consultees during approval of subsequent details under requirements. I have also placed significant weight on BDC's views on the draft DCO as the body responsible for enforcement of the DCO (PD-004, REP-025 and REP-081).
- 7.17 I am satisfied therefore that all of the proposed draft requirements should be included in the DCO.

Schedules

- 7.18 The Schedules were amended during the examination to ensure the accurate references to public rights of way were included and to provide protective provisions for statutory undertakers.
- 7.19 Schedule 10 contains protective provisions in three Parts. Part 3 has been agreed with CRT. Whilst the other Parts have not been expressly agreed with affected statutory undertakers, the protective provisions follow recent DCOs and are subject to any written agreement between the applicant and the statutory undertakers concerned. Part 2 of Schedule 10 applies to operators of electronic communications code networks⁴⁹. All statutory undertakers which had submitted representations on this application withdrew them before the close of the examination (see paragraphs 6.23-6.28 of chapter 5 of this report).
- 7.20 I am satisfied that all of the Schedules should be included. Some amendments to the protective provisions from the draft DCO submitted at the end of the examination (PD-018) are recommended to accommodate modern drafting style (see paragraphs 7.37-7.86 and Appendix F of this report).

Recommended DCO drafting amendments⁵⁰

- 7.21 Article 9(7) second line – deleted ‘shall be’ and replaced with ‘is’.
- 7.22 Article 36(2) third line – deleted ‘shall’ and replaced with ‘must’.
- 7.23 Article 36(2) fourth line – deleted ‘shall’ and replaced with ‘must’.
- 7.24 Article 39 first line – deleted ‘shall affect’ and replaced with ‘affects’.
- 7.25 Requirement 4(1) second line – inserted at the end of the line ‘..in consultation with the Health Protection Agency.’.
- 7.26 Requirement 4(6) second line – deleted ‘shall apply’ and replaced with ‘applies’.
- 7.27 Requirement 11(3) fourth line – deleted ‘thereafter’.
- 7.28 Requirement 11(3) sixth line- deleted ‘thereafter’.
- 7.29 Requirement 13(1) fourth line – deleted ‘thereafter’.

⁴⁹ British Telecommunications PLC is stated to have cables which are supported by a pole at Butlers Wood Cottage (REP-057 answer to my question 1.7).

⁵⁰ The references to line numbers are taken from the draft DCO as it appears in Revision E of the DCO (PD018).

- 7.30 Requirement 13(2) second line – deleted ‘and to thereafter’ and inserted ‘.The fencing shown on the approved plan is to..’ .
- 7.31 Requirement 14 third line - deleted ‘thereafter’.
- 7.32 Requirement 15 fifth line - deleted ‘thereafter’.
- 7.33 Requirement 15 last sentence - deleted ‘thereafter’ and inserted at the start of the sentence ‘After cessation of works in that area...’.
- 7.34 Requirement 16(2) - deleted ‘thereafter’.
- 7.35 Requirement 17(2) fifth line - deleted ‘thereafter’.
- 7.36 Requirement 18(2) - deleted ‘thereafter’.

Schedule 10 Part 3

- 7.37 Paragraph 1(1) first line - deleted ‘shall’.
- 7.38 Paragraph 1(2) definition of ‘practical completion’ last line – deleted ‘shall be’ and replaced with ‘are’.
- 7.39 Paragraph 2(1) first line - deleted ‘shall’ and replaced with ‘must’.
- 7.40 Paragraph 2(2) first line - deleted ‘shall’ and replaced with ‘must’.
- 7.41 Paragraph 2(3) first line - deleted ‘shall’ and replaced with ‘must’.
- 7.42 Paragraph 2(4) first line - deleted ‘shall’ and replaced with ‘must’.
- 7.43 Paragraph 2(5) first line - deleted ‘shall’ and replaced with ‘must’.
- 7.44 Paragraph 3 first line - deleted ‘shall’ and replaced with ‘must’.
- 7.45 Paragraph 3(b) first line - deleted ‘shall’ and replaced with ‘must’.
- 7.46 Paragraph 3(c)(ii) second line - deleted ‘shall apply’ and replaced with ‘applies’.
- 7.47 Paragraph 4 first line - deleted ‘shall’ and replaced with ‘must’.
- 7.48 Paragraph 5(1) second line - deleted ‘shall’ and replaced with ‘must’.
- 7.49 Paragraph 5(2) first line - deleted ‘shall’ and replaced with ‘must’.

- 7.50 Paragraph 5(2)(a) first line – deleted 'shall' and replaced with 'must'.
- 7.51 Paragraph 5(3) first line – deleted 'shall'.
- 7.52 Paragraph 5(3) third line – deleted 'shall'.
- 7.53 Paragraph 5(4) first line - deleted 'shall' and replaced with 'must'.
- 7.54 Paragraph 6(1) first line - deleted 'shall' and replaced with 'must'.
- 7.55 Paragraph 6(1) fourth line - deleted 'shall' and replaced with 'must'.
- 7.56 Paragraph 6 (2) first line - deleted 'shall' and replaced with 'must'.
- 7.57 Paragraph 6(2) fourth line – deleted 'shall be' and replaced with 'is'.
- 7.58 Paragraph 6(3)(b) second line – deleted 'shall be' and replaced with 'are'.
- 7.59 Paragraph 6(3) last paragraph first line - deleted 'shall' and replaced with 'must'.
- 7.60 Paragraph 6(4) fourth line – deleted 'shall' and replaced with 'must'.
- 7.61 Paragraph 7 second line - deleted 'shall' and replaced with 'must'.
- 7.62 Paragraph 7 last paragraph first line - deleted 'shall' and replaced with 'must'.
- 7.63 Paragraph 8 first line - deleted 'shall' and replaced with 'must'.
- 7.64 Paragraph 9(1) first line - deleted 'shall' and replaced with 'must'.
- 7.65 Paragraph 9(1)(a) second line – deleted 'as aforesaid' and replaced with 'under the provisions in paragraph 6'.
- 7.66 Paragraph 9(2) first line – deleted 'shall authorise' and replaced with 'authorises'.
- 7.67 Paragraph 9(3) first line - deleted 'shall' and replaced with 'must'.
- 7.68 Paragraph 10 first line - deleted 'shall' and replaced with 'must'.
- 7.69 Paragraph 10 third line - deleted 'shall' and replaced with 'must'.

- 7.70 Paragraph 11(1) first line - deleted 'shall' and replaced with 'must'.
- 7.71 Paragraph 11(2) first line - deleted 'shall' and replaced with 'must'.
- 7.72 Paragraph 11(2)(b) second line - deleted 'shall' and replaced with 'must'.
- 7.73 Paragraph 12 third line - deleted 'shall' and replaced with 'must'.
- 7.74 Paragraph 13 (1) first line - deleted 'shall' and replaced with 'must'.
- 7.75 Paragraph 13(c) second line – deleted 'shall be' and replaced with 'is'.
- 7.76 Paragraph 14(1) first line – deleted 'shall be' and replaced with 'is'.
- 7.77 Paragraph 14(1) second line – deleted 'shall' and replaced with 'must'.
- 7.78 Paragraph 14(1) third line – deleted two instances of 'shall' and replaced with 'must'.
- 7.79 Paragraph 14(2) first line – deleted 'shall be' and replaced with 'is' and inserted 'must' immediately before the words 'make good'.
- 7.80 Paragraph 14(2)(b) third line - deleted 'shall' and replaced with 'must'.
- 7.81 Paragraph 14(3) third line - deleted 'shall' and replaced with 'must'.
- 7.82 Paragraph 14(4) first line - deleted 'shall' and replaced with 'must'.
- 7.83 Paragraph 14(4) first line - deleted 'shall' and replaced with 'must'.
- 7.84 Paragraph 14(4) second line – deleted 'as aforesaid' and replaced with 'as referred to in paragraph 14(2)(b)'.
- 7.85 Paragraph 14(4) at the end of the second line – deleted 'shall' and replaced with 'is to'.
- 7.86 Paragraph 15 second line - deleted 'shall' and replaced with 'must'.
- 7.87 Explanatory Note third paragraph - deleted 'would permit' and replaced with 'permits'.

8 OVERALL CONCLUSIONS AND RECOMMENDATION

- 8.1 In coming to my overall conclusion I have had regard to the LIRs submitted during the examination, any prescribed matters and all matters I consider to be both important and relevant to this application. The legal and policy context I consider applies to this application is set out in chapter 2. My findings and conclusions are in chapter 4 and my overall conclusion on the case for development consent and my recommendation that development consent is granted is set out in chapter 5.
- 8.2 I have also considered the request for compulsory acquisition powers in chapter 6 and concluded that there is a compelling case in the public interest for the grant of compulsory acquisition powers sought by the applicant.
- 8.3 In coming to my view that development consent should be granted in the form proposed in Appendix F I have taken into account all matters raised in representations and consider there is no reason either individually or collectively that would lead me to a different conclusion.

APPENDICES

APPENDIX A- THE EXAMINATION

The table below lists the main 'events' occurring during the examination.

Date	Examination Event
7 January 2013	Preliminary meeting and start of Examination
15 January 2013	Issue of the timetable and ExA first written questions
4 February 2013	Deadline for receipt by the ExA of: Notification by interested parties of wish to speak at the open floor hearing Notification by affected persons of wish to speak at compulsory acquisition hearing Notification by interested parties of wish to make oral representations at a specific issue hearing on the draft Development Consent Order (DCO)
12 February 2013	Deadline for receipt by the ExA of: Comments on relevant representations Summaries of all relevant representations exceeding 1500 words Written representations by all interested parties Summaries of all written representations exceeding 1500 words Local Impact Report from any local authorities Responses to ExA first written questions
7 March 2013	Deadline for receipt by the ExA of: Statements of Common Ground Comments on WRs and responses to comments on RRs Comments on LIRs Comments on responses to ExA's first written questions Any proposed amendments to the draft DCO
13 March 2013	Accompanied site visit (morning)
13 March 2013	Open-floor hearings (afternoon and evening)
15 March 2013	Issue specific hearing - Cancelled
16 April 2013	Compulsory acquisition hearing
16 April 2013	Section 127 hearing- Cancelled
17 April 2013	Issue specific hearing relating to the draft DCO

- | | |
|-------------|---|
| 9 May 2013 | Deadline for receipt by the ExA of:
The final revision of the draft DCO
Explanatory Memorandum
Book of Reference
Responses to the ExA request for further
information. |
| 28 May 2013 | Deadline for submission of comments by all
Interested Parties on the documents submitted
on 9 May 2013 |
| 30 May 2013 | Close of the examination |

APPENDIX B- PROCEDURAL DECISIONS

The table below lists the main 'procedural decisions' taken by the ExA.

Date	Procedural Decision
1 October 2012	Acceptance by Secretary of State for Examination
6 December 2012	Rule 6 letter with Rule 4 Annex sent (Infrastructure Planning (Examination Procedure) Rules 2010)
11 January 2013	Rule 8 letter sent (Infrastructure Planning (Examination Procedure) Rules 2010)
28 January 2013	Notification by ExA on amendments to the Rule 8 letter (Infrastructure Planning (Examination Procedure) Rules 2010) sent on the 11 January
11 February 2013	Notification by ExA of the: Open floor hearings on 13 March Accompanied site visit on 13 March Issue specific hearing relating to the draft development consent order on 15 March
14 March 2013	Rule 17 notification (Infrastructure Planning (Examination Procedure) Rules 2010) of procedural decisions taken at the: Open floor hearing on 13 March and notification of the issue specific hearing on the Development Consent Order on the 17 April
14 March 2013	Notification by ExA of the cancellation of the issue specific hearing on the 15th March
15 March 2013	Notification by ExA of the: Compulsory acquisition hearing on the 16th April
19 April 2013	Rule 17 notification (Infrastructure Planning (Examination Procedure) Rules 2010) of procedural decisions taken following the: Compulsory acquisition hearing on 16 April 2013 Issue specific hearing on the draft DCO on 17 April 2013 and a request for further information.

Section 127

Date	Procedural Decision
15 April 2013	Notification by ExA of the cancellation of the Section 127 hearing on the 16th April
8 May 2013	Notification by the ExA setting out deadlines for the written process of section 127 sent to:
	Canal and River Trust
	National Grid
	Western Power Distribution
	Network Rail

APPENDIX C- THOSE SPEAKING AT HEARINGS AND OTHER EVENTS HELD DURING THE EXAMINATION AND THOSE IN ATTENDANCE AT THE SITE VISIT

The Preliminary Meeting held 7 January 2013

Name	Organisation
Richard Guyatt	Bond Pearce ⁵¹
Richard Brown	N/A
Dr Rehan ul-Haq	N/A
Charles Hotham	Barnt Green Parish Council
Doreen Hawkley	Barnt Green Parish
John Cypher	Alvechurch Parish Council
David Balme	Worcestershire County Council

Attendees at the Site Visit held 13 March 2013

Name	Organisation
John Hughes	Network Rail
Robert Aldridge	Network Rail
Roger Clarke	Network Rail
David Davey	Network Rail
Dale Birch	Bromsgrove District Council
Charles Hotham	Barnt Green Parish Council
David Ward	N/A
John Cypher	Alvechurch Parish Council
Andy Humphries	Alvechurch Parish Council
Douglas Castle	Ramblers Association
Len Critchlow	N/A

The Open Floor Hearing held 13 March 2013 (14:30), Alvechurch Village Hall:

Name	Organisation
Richard Guyatt	Bond Pearce
David Ward	N/A
Douglas Castle	Ramblers Association
John Cypher	Alvechurch Parish Council
Charles Hotham	Barnt Green Parish
Len Critchlow	N/A

The Open Floor Hearing held 13 March 2013 (18:00) at Alvechurch Village Hall:

Name	Organisation
Simon Thompson	N/A
Carol Sandys	N/A

⁵¹ On 29 April 2013 Bond Pearce advised the Planning Inspectorate of a firm merger and a change in name to Bond Dickinson

The Compulsory Acquisition Hearing 16 April 2013, The Ark, Alvechurch:

Name	Organisation
Richard Guyatt	Bond Pearce
Dr Rehan ul-Haq	N/A

The Issue Specific Hearing 17 April 2013, Alvechurch Village Hall:

Name	Organisation
Richard Guyatt	Bond Pearce
Dale Birch	Bromsgrove District Council
Dr Rehan ul-Haq	N/A
John Cypher	Alvechurch Parish Council
Charles Hotham	Barnt Green Parish
Len Critchlow	N/A
Andy Humphries	Alvechurch Parish Council

APPENDIX D – EXAMINATION LIBRARY

The following is a list of documents that were submitted during the course of the Examination. The documents are grouped together by document type.

Each document has been given an identification number (e.g. APP1), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning website at the Redditch Branch Enhancement Scheme Project page:

<http://infrastructure.planningportal.gov.uk/projects/West%20Midlands/Redditch-Branch-Enhancement-Scheme/>

INDEX

Document type	Reference
Application Documents	APPxxx
Procedural Decisions	DECxxx
Project Documents	PDxxx
Relevant Representations	RRxxx
Representations	REPxxx
Events Documents	EVxxx
Additional Submissions	ASxxx

APPLICATION DOCUMENTS

Application Form

APP-001	List of Application Documents
APP-002	1.1 Application Letter
APP-003	1.2 Application Form
APP-004	1.3 Copies of Newspaper Notices

Plans

APP-005	2.1 Overview Plan
APP-006	2.2 Alvechurch Station General Arrangement
APP-007	2.3 Land Affected Plans
APP-008	2.4 Land Plans
APP-009	2.5 Works Plans
APP-010	2.6 Existing Access and Rights of Way Plan
APP-011	2.7 Footpath Stopping Up and Diversion Plans
APP-012	2.8 Extinguishment of Private Right of Way Plan
APP-013	2.9 Engineering Plans
APP-014	2.10 Landscaping Plans
APP-015	2.11 Section Drawings
APP-016	2.12 Plans Statutory and Non-Statutory Sites or Features - Nature Conservation and Protected Species
APP-017	2.13 Plan of Statutory and Non-Statutory Sites or Features
APP-018	2.14 Haul Road and Compound Plan
APP-019	2.15 Gradient Profile
APP-020	2.16 Access to Works and Traffic Regulation Plan
APP-021	2.17 New Footpath Route Plan

Reports

APP-022	5.1.1 Consultation Report
APP-023	5.1.2 Consultation Responses
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- APP-039 [3.1 Draft Development Consent Order](#)
- APP-040 [3.2 Explanatory Memorandum](#)
- APP-041 [3.3 Comparison of Draft Order with Model Provisions](#)

Compulsory Acquisition Documents

- APP-042 [4.1 Statement of Reasons](#)
- APP-043 [4.2 Funding Statement](#)
- APP-044 [4.3 Book of Reference](#)

Other Documents

- APP-045 [7.1 Details of Other Consents and Licences](#)

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General Procedural Decisions

- DEC-001 [Acceptance Decision Letter](#)
- DEC-002 [Section 55 Acceptance of Applications Checklist](#)
- DEC-003 [Rule 6 Letter with Rule 4 Annex](#)
- DEC-004 [Rule 8 Letter](#)
- DEC-005 [Amendment to Rule 8 Letter](#)
- DEC-006 [Notification of Open Floor Hearing Issue Specific Hearing and Accompanied Site Visit](#)
- DEC-007 [Hearing Cancellation and Rule 17 Request](#)
- DEC-008 [Rule 17 Confirmation and DCO Hearing Notification](#)
- DEC-009 [Notification of Compulsory Acquisition Hearing Dated 15 March 2013](#)
- DEC-010 [Notification of Cancellation of s127 Hearing](#)
- DEC-011 [Rule 17 sent 19 April 2013](#)
- DEC-012 [Section 99 letter - Completion of examination of application](#)

PROJECT DOCUMENTS

Statements of Common Ground

- PD-001 [Statement of Common Ground between Network Rail and Worcestershire County Council](#)
- PD-002 [Statement of Common Ground between Network Rail and Natural England](#)
- PD-003 [Statement of Common Ground between Network Rail and the Environment Agency](#)
- PD-004 [Statement of Common Ground between Network Rail and Bromsgrove District Council](#)

Draft Development Consent Order and s106

- PD-005 [Draft Development Consent Order \(revised 12 February 2013\)](#)
- PD-006 [Comparison Draft DCO \(tracked changes\) \(revised 12 February 2013\)](#)
- PD-007 [Explanatory Memorandum \(revised 12 February 2013\)](#)
- PD-008 [Comparison Explanatory Memorandum \(tracked changes\) \(revised 12 February 2013\)](#)
- PD-009 [Draft Development Consent Order \(revised 7 March 2013\)](#)
- PD-010 [Comparison Draft DCO 12 February v DCO 7 March \(revised 7 March 2013\)](#)

PD-011	Explanatory Memorandum (revised 7 March 2013)
PD-012	Comparison Explanatory Memorandum 12 February v 7 March (revised 7 March 2013)
PD-013	Draft Development Consent Order (revised 2 April 2013)
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PD-015	Draft Development Consent Order (revised 11 April 2013)
PD-016	Comparison Draft DCO 2 April v 11 April (revised 11 April 2013)
PD-017	Comparison Draft DCO Original v 11 April (revised 11 April 2013)
PD-018	Draft development consent order (revised 9 May 2013)
PD-019	Comparison Draft DCO 11 April v 9 May (revised 9 May 2013)
PD-020	Comparison Draft DCO Original v 9 May (revised 9 May 2013)
PD-021	Explanatory Memorandum (revised 9 May 2013)
PD-022	Comparison Explanatory Memorandum Original v 9 May (revised 9 May 2013)

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PD-023	Updated Book of Reference (revised 4 April 2013)
PD-024	Updated Book of Reference - Summary of Changes (revised 4 April 2013)
PD-025	Lands Required for Acquisition Table (submitted 4 April 2013)
PD-026	Updated Book of Reference (revised 8 May 2013)

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PD-027	Section 56 & Section 59 Certificates
PD-028	Revised Section 56 Notice
PD-029	Rule 13 Notice of Open Floor Hearings and DCO Hearing
PD-030	Rule 13 Notice of Compulsory Acquisition and DCO Hearing
PD-031	Rule 13 Press Notice of hearings

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PD-032	Section 127 Application in relation to the Canal and River Trust - Letter to the Secretary of State for Environment Food and Rural Affairs
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PD-037	Section 127 Application in relation to the Canal and River Trust - Appendix 5 - Land Registry Official Copy and File Plan Title WR116188
PD-038	Section 127 Application in relation to the Canal and River Trust - Appendix 6 - Photographs
PD-039	Section 127 Application in relation to the Canal and River Trust - Appendix 7 - Note of meeting between NRIL and CRT on 14 January 2013
PD-040	Section 127 Application in relation to the Canal and River Trust - Appendix 8 - CRT Representation dated 24 August 2012

- PD-041 [Section 127 Application in relation to the Canal and River Trust - Appendix 9 - Book of Reference](#)
- PD-042 [Section 127 Application in relation to the Canal and River Trust - Appendix 10 - Statement of Reasons](#)
- PD-043 [Addendum to Section 127 Application in relation to the Canal and River Trust - Letter to the Secretary of State for Environment Food and Rural Affairs](#)
- PD-044 [Section 127 Application in relation to the Canal and River Trust - Appendix 11 - Code of Practice for Works Affecting the Canal and River Trust](#)
- PD-045 [Section 127 Application in relation to the Canal and River Trust - Appendix 12 - Note of Site Meeting with Canal and River Trust](#)
- PD-046 [Section 127 Application in relation to the Canal and River Trust - Appendix 13 - Protection for the Canal and River Trust](#)
- PD-047 [Submission by the Canal and River Trust - Response to section 127 letter from the Planning Inspectorate seeking representation prior to the scheduled hearing](#)
- PD-048 [Planning Inspectorate appointment letter for the section 127 application in relation to the Canal and River Trust](#)
- PD-049 [Update of negotiations on application between CRT and NR](#)
- PD-050 [Letter from Bond Pearce dated 11 April 2013 - update on current position of the section 127 application in relation to the Canal and River Trust](#)
- PD-051 [Email from the Canal and River Trust dated 11 April 2013 – agreement to Bond Pearce letter of 11 April 2013](#)
- PD-052 [Email from Bond Pearce dated 12 April 2013 advising Network Rail are content with the written representation process](#)
- PD-053 [Email from the Canal and River Trust dated 12 April 2013 confirming agreement to the written representation process](#)
- PD-054 [Letter from the Canal and River Trust dated 13 April 2013 confirming agreement to the written representation process](#)
- PD-055 [Letter from the Planning Inspectorate to the Canal and River Trust regarding the written process](#)
- PD-056 [Letter from the Planning Inspectorate to Network Rail regarding the written process for the Canal and River Trust and National Grid](#)
- PD-057 [Email from the Canal and River Trust dated 14 May 2013 - update on the process](#)
- PD-058 [Letter from Bond Dickinson dated 14 May 2013 - update on the process](#)
- PD-059 [Email from the Canal and River Trust dated 29 May 2013 confirming the withdrawal of their relevant and written representations](#)
- PD-060 [Email from Bond Dickinson dated 29 May 2013 advising Network Rail withdrawal of s127 application in relation to the Canal and River Trust](#)
- Western Power Distribution
- PD-061 [Section 127 Application in relation to Western Power Distribution - Letter to the Secretary of State for Energy and Climate Change](#)
- PD-062 [Letter from Network Rail to Western Power Distribution informing them of the section 127 application](#)
- PD-063 [Planning Inspectorate appointment letter for the section 127 application in relation to Western Power Distribution](#)

PD-064	<u>Section 127 Application Addendum Summary</u>
PD-065	<u>Section 127 Application in relation to Western Power Distribution - Appendix 1 - Draft Order</u>
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PD-069	<u>Section 127 Application in relation to Western Power Distribution - Appendix 5 - WPD additional representation dated 31 January 2013</u>
PD-070	<u>Section 127 Application in relation to Western Power Distribution - Appendix 6 - Correspondence between the Applicant and WPD</u>
PD-071	<u>Section 127 Application in relation to Western Power Distribution - Appendix 7 - Book of Reference</u>
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PD-074	<u>Section 127 Application in relation to Western Power Distribution - Appendix 10 - Information on Overhead Lines</u>
PD-075	<u>Section 127 Application in relation to Western Power Distribution - Appendix 11 - Third Party Working</u>
PD-076	<u>Email from Bond Pearce including a copy of a letter from WPD dated 11 April 2013</u>
PD-077	<u>Letter from Western Power Distribution dated 12 April 2013 – withdrawal of written representation and voluntary agreement with Network Rail</u>
PD-078	<u>Formal withdrawal of the Relevant Representation made by WPD</u>
PD-079	<u>Letter dated 22 April 2013 from Network Rail confirming the withdrawal of the s127 application</u>
National Grid	
PD-080	<u>Section 127 Application in relation to National Grid - Letter to the Secretary of State for Energy and Climate Change</u>
PD-081	<u>Letter to National Grid (Gas) Plc</u>
PD-082	<u>Planning Inspectorate appointment letter for the section 127 application in relation to National Grid</u>
PD-083	<u>Section 127 Application Addendum Summary</u>
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PD-089	<u>Section 127 Application in relation to National Grid - Appendix 6 - Book of Reference</u>
PD-090	<u>Section 127 Application in relation to National Grid - Appendix 7 -</u>

	Protective Provisions
PD-091	Section 127 Application in relation to National Grid - Appendix 8 - Safe Working
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PD-093	Letter from Network Rail providing update on s127 Application
PD-094	Letter dated 12 April 2013 on behalf of National Grid - Agreement with Network Rail to deal with outstanding representations in writing
PD-095	Letter from National Grid - request to defer section 127 hearing
PD-096	Letter from the Planning Inspectorate to National Grid regarding the written process
PD-097	Letter from Field Fisher Waterhouse dated 14 May 2013 - update on process
PD-098	Letter from Bond Dickinson dated 14 May 2013 - update on process in relation to National Grid
PD-099	Letter from National Grid confirming the withdrawal of their relevant and written representations
PD-100	Letter from Bond Dickinson dated 29 May 2013 advising Network Rail withdrawal of s127 application in relation to National Grid
PD-101	Letter from Bond Dickinson dated 29 May 2013 confirming Network Rail withdrawal of all s127 applications

Updated documents

PD-102	Ecological Impact Assessment Report Updated November 2012
PD-103	Land Plans Cover Sheet (submitted 4 April 2013)
PD-104	Land Plans Sheet 1 of 6 (submitted 4 April 2013)
PD-105	Land Plans Sheet 2 of 6 (submitted 4 April 2013)
PD-106	Land Plans Sheet 3 of 6 (submitted 4 April 2013)
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PD-111	Alvechurch Station proposed general arrangement Sheet 1 of 2 (submitted 9 May 2013)
PD-112	Alvechurch Station existing general arrangement (submitted 9 May 2013)
PD-113	Works Plan Sheet 1 of 4 (submitted 9 May 2013)
PD-114	Letter from Bond Dickinson dated 29 May 2013 - update on position of Network Rail
ID not assigned	Network Rail - Footpath stopping up map Sheet 1 of 3 (submitted 9 May 2013) listed as REP-075
ID not assigned	Updated Network Rail footpath stopping up and diversion plan Sheet 2 of 3 (submitted 9 May 2013) listed as REP-076

RELEVANT REPRESENTATIONS

RR-001	10016720	Helen Wilson
RR-002	10016726	John Adams
RR-003	10016730	Simon Thompson
RR-004	10016742	Beverley Kessler
RR-005	10016743	John Bishop
RR-006	10016745	Sarah Courbet

RR-007	10016752	Mark O
RR-008	10016780	Chris Miall
RR-009	10016781	Dalcour Maclaren Limited (Withdrawn)
RR-010	10016784	Redditch Borough Council
RR-011	10016785	Barnt Green Parish Council
RR-012	10016786	Rich Holdsworth
RR-013	10016787	National Grid Plc
RR-014	10016788	Richard H Brown
RR-015	10016792	Mr D M Birch on behalf of Bromsgrove District Council
RR-016	10016793	Level 3 Communications UK Limited (Withdrawn)
RR-017	10016795	Mr & Mrs R Sly
RR-018	10016797	Geoff Wise
RR-019	10016798	Carol Sandys
RR-020	10016802	Alvechurch Village Society
RR-021	10016806	North Worcestershire Economic Development & Regeneration
RR-022	10016807	Mr Arnold Ashton on behalf of Dr Rehan ul-Haq
RR-023	10016811	Barnt Green Residents Association
RR-024	10016812	Alvechurch Parish Council
RR-025	10016813	Western Power Distribution
RR-026	10016814	Ms J Guise
RR-027	10016815	Health Protection Agency
RR-028	10016816	Environment Agency
RR-029	10016817	English Heritage
RR-030	10016818	Canal & River Trust
RR-031	10016819	Worcestershire Regulatory Services
RR-032	10016820	Thomas Leslie Bailey
RR-033	10016821	Rob Mitchell on behalf of Gallagher Estates Ltd
RR-034	10016822	Ramblers Association
RR-035	10016823	Natural England
RR-036	REDD-0002	David Farrow on behalf of Sarah Franklin
RR-037	REDD-0001	Roger Parish
RR-038	REDD-0003	David Ward

REPRESENTATIONS

Adequacy of Consultation Representations

REP-001	Dudley Metropolitan Borough Council - Adequacy of Consultation
REP-002	Solihull Metropolitan Borough Council - Adequacy of Consultation
REP-003	Bromsgrove District Council - Adequacy of Consultation
REP-004	Redditch Borough Council - Adequacy of Consultation
REP-005	Worcestershire County Council - Adequacy of Consultation

Written Representations

REP-006	Arnold Ashton of WYG for Dr ul-Haq
REP-007	Richard Brown
REP-008	Leslie Bailey
REP-009	Carol Sandys
REP-010	Health and Safety Executive
REP-011	Simon Thompson
REP-012	Barnt Green Residents Association
REP-013	Mr and Mrs Parish

REP-014 [Barnt Green Parish Council](#)
 REP-015 [David Ward](#)
 REP-016 [Environment Agency](#)
 REP-017 [Gallagher Estate](#)
 REP-018 [Natural England](#)
 REP-019 [Alvechurch Parish Council](#)
 REP-020 [Ramblers Association](#)
 REP-021 [Western Power Distribution](#)
 REP-022 [Canal and River Trust](#)
 REP-023 [David Walker](#)

Local Impact Reports

REP-024 [Worcestershire County Council Local Impact Report](#)
 REP-025 [Bromsgrove District Council Local Impact Report](#)

Comments on Local Impact Reports, Relevant Representations and
 Written Representations

REP-026 [Network Rail - comments on Local Impact Report by Bromsgrove District Council](#)
 REP-027 [Network Rail - comments on Local Impact Report by Worcestershire County Council](#)
 No id assigned [Alvechurch Parish Council response contained in REP-050](#)
 REP-028 [Network Rail comments on Relevant Representations- Reps 1-28](#)
 REP-029 [Network Rail comments on Relevant Representations- Reps 29-40 Appendices submitted with comments on Relevant Representations \(Documents submitted as one document\)](#)
 REP-030 [Appendix A- Grip Stage 3 Option Selection Report and Option Diagram Conclusions and Recommendations](#)
 REP-031 [Appendix B- Railways Act 2005 Statement for Control Period 5 July 2012](#)
 REP-032 [Appendix C Policy on Level Crossings- Office of Rail Regulation \(ORR\)- February 2007](#)
 REP-033 [Network Rail comments on the Examining Authority first written questions](#)
 REP-034 [Network Rail responses to Written Representations Appendices submitted with comments on Examining Authority's First Written Questions and Responses to Written Representations \(Documents submitted as one document\)](#)
 REP-035 [Appendix A Letter dated 1 March 2013 from Network Rail to Western Power Distribution](#)
 REP-036 [Appendix B Network Rail land ownership at Barnt Green Station](#)
 REP-037 [Appendix C Letter dated 30 January 2013 from Network Rail to Canal and River Trust](#)
 REP-038 [Appendix D Annexes to Alvechurch Station Access Conditions \(extracts\)](#)
 REP-039 [Appendix E Letter dated 4 March 2013 from Network Rail to Mr Arnold Ashton](#)
 REP-040 [Appendix F Dellow Grove \(Landscaping Plan Engineering Plans and Photographs\)](#)
 REP-041 [Appendix G Draft Traffic Management Plan \(extract\)](#)
 REP-042 [Appendix H Letter dated 25 February 2013 from Network Rail to Mr](#)

- [David Ward](#)
- REP-043 [Appendix J Accessible Train Station Design for Disabled People A Code of Practice \(extract\)](#)
- REP-044 [Appendix K Alvechurch Station footbridge Photomontages and General Arrangement drawing](#)
- REP-045 [Network Rail Footbridge Access Standard Ramp General Arrangement drawing](#)
- REP-046 [Network Rail photographs of Ramps at Stations Longbridge Tile Hill and Prestatyn](#)
- REP-047 [GRIP Stage 3 Option Selection Report and Option Diagram Conclusions and Recommendations](#)
- REP-048 [Policy on Level Crossings Office of Rail Regulation \(ORR\)- Feb 2007](#)
- REP-049 [Railways Act 2005 Statement for Control Period 5 July 2012](#)
- Responses to Examining Authority's First Written Questions
- REP-050 [Alvechurch Parish Council - response to the Examining Authority first written questions](#)
- REP-051 [Worcestershire Regulatory Services - response to the Examining Authority first written questions](#)
- REP-052 [Health Protection Agency - response to the Examining Authority first written questions](#)
- REP-053 [Barnt Green Residents Association - response to the Examining Authority first written questions](#)
- REP-054 [Bromsgrove District Council - response to the Examining Authority first written questions](#)
- REP-055 [Worcestershire Regulatory Services - further response to the Examining Authority first written questions](#)
- REP-056 [Barnt Green Parish Council - response to the Examining Authority first written questions](#)
- No id assigned [Environment Agency response contained in REP-016](#)
- No id assigned [Gallagher Estate response contained in REP-017](#)
- REP-057 [Natural England response to the Examining Authority first written questions](#)
- REP-058 [Network Rail responses to the Examining Authority first written questions Part 1](#)
- REP-059 [Network Rail responses to the Examining Authority first written questions Part 2](#)
[Appendices submitted with Examining Authority's First Written Questions \(Documents submitted as one document\)](#)
- REP-060 [Appendix A Levels of Work No 1 and Birmingham and Worcester Canal](#)
- REP-061 [Appendix B- Network Rail notes of meeting with Canal and River Trust on 14 January 2013](#)
- REP-062 [Appendix C Network Rail CP4 Delivery Plan 2012 - December 2012 update](#)
- REP-063 [Appendix D Network Rail - Footbridge Access Standard Ramp General Arrangement drawing](#)
- REP-064 [Appendix E Network Rail photographs of Ramps at Stations Longbridge Tile Hall and Prestatyn](#)
- REP-065 [Appendix F GRIP 3 Addendum No 1 - Alvechurch Station Footbridge](#)

- [Option Report](#)
 REP-066 [Appendix G Annotated Drawings in response to Question 9.2](#)
 REP-067 [Appendix H Letter dated 28 January 2013 from Network Rail to Severn Trent Water Limited](#)
 REP-068 [Appendix J Virgin Media plan showing Duct Trench route at Birmingham and Worcester Canal towpath](#)

Responses to Rule 17 request for information issued 8 March 2013

- REP-069 [Network Rail](#)
 REP-070 [Worcestershire Regulatory Services](#)
 REP-071 [Worcestershire County Council](#)
 REP-072 [Bromsgrove District Council](#)

Responses to Rule 17 request for information issued 14 March 2013

- No id assigned [Bromsgrove District Council response contained in REP-072](#)
 REP-073 [Letter from Bond Pearce dated 2 April 2013 enclosing DCO schedule of mitigation and s127 updates](#)
 REP-074 [Letter from Network Rail explaining footpath stopping up map enclosing sheets 1 and 2 of 3](#)
 REP-075 [Network Rail - Footpath stopping up map Sheet 1 of 3 \(submitted 9 May 2013\)](#)
 REP-076 [Updated Network Rail footpath stopping up and diversion plan Sheet 2 of 3 \(submitted 9 May 2013\)](#)
 REP-077 [Network Rail - Schedule of Mitigation](#)
 REP-078 [Barnt Green Parish Council response for information with regard to planning permission recently granted in the vicinity of Barnt Green railway station](#)

Responses to Rule 17 request for information issued 19 April 2013

- REP-079 [Letter from Bond Dickinson on behalf of Network Rail dated 9 May 2013](#)
 REP-080 [Update on Great Crested Newt licence from Network Rail and Natural England](#)

Comments on the Draft Development Consent Order and Book of Reference

- REP-081 [Bromsgrove District Council - no comments on revised and additional documents of 9 May 2013](#)
 REP-082 [Dr ul-Haq - submission on revised draft DCO of 9 May 2013](#)
 REP-083 [Alvechurch Parish Council submission on revised draft DCO of 9 May 2013](#)
 REP-084 [Barnt Green Parish Council submission on revised draft DCO of 9 May 2013](#)

Other Submissions Accepted by the Examining Authority

- REP-085 [Network Rail response to the Examining Authority Rule 6 letter](#)
 REP-086 [Ecological Impact Assessment Report Updated November 2012](#)
 REP-087 [Letter from the Canal and River Trust to Network Rail dated 24 August 2012](#)

PRELIMINARY MEETING, HEARING AND ACCOMPANIED SITE VISIT DOCUMENTS

Preliminary Meeting – 7 January 2013 – Alvechurch Village Hall

- EV-001 [Audio recording of the preliminary meeting](#)
 EV-002 [Submission made at preliminary meeting by Dr ul-Haq](#)

Accompanied Site Visit – 13 March 2013 (morning)

- EV-003 [Site visit itinerary drawing](#)
 EV-004 [Information offered at the site visit concerning planning permission at Weights Lane](#)

Open Floor Hearing – 13 March 2013 (afternoon) – Alvechurch Village Hall

- EV-005 [Audio recording of the afternoon open floor hearing on 13 March 2013](#)
 EV-006 [Email 1 from Richard Brown to the Planning Inspectorate accepted in lieu of attendance at the open floor hearing](#)
 EV-007 [Email 2 from Richard Brown to Network Rail accepted in lieu of attendance at the open floor hearing](#)
 EV-008 [Ramblers Association map submitted at the open floor hearing](#)
 EV-009 [Email submission by Mr D Ward following the hearing as requested by the Examining Authority](#)
 EV-010 [Alvechurch Parish Council speaking notes](#)
 EV-011 [Mr D Ward speaking notes](#)

Open Floor Hearing – 13 March 2013 (evening) – Alvechurch Village Hall

- EV-012 [Audio recording of the evening open floor hearing on 13 March 2013](#)

Compulsory Acquisition Hearing – 16 April 2013 – The Ark, Alvechurch

- EV-013 [Letter from Gallagher Estates dated 5 April 2013 confirming attendance at CA hearing and attaching representations of 15 November and 12 February](#)
 EV-014 [Letter from Gallagher Estates dated 12 April 2013 – Submission in lieu of attendance](#)
 EV-015 [Agendas for the Compulsory Acquisition and Issue Specific hearings](#)
 EV-016 [Statement from Robert Aldridge of Network Rail relating to lands and interests to be compulsorily acquired](#)
 EV-017 [Audio recording of the Compulsory Acquisition Hearing - part 1](#)
 EV-018 [Audio recording of the Compulsory Acquisition Hearing - part 2](#)
 No id [Letter from Bond Dickinson dated 9 May 2013 - see REP-078](#)
 assigned

Issue Specific Hearing – 17 April 2013 – Alvechurch Village Hall

- EV-019 [Audio recording of the Issue Specific Hearing - part 1](#)
 EV-020 [Audio recording of the Issue Specific Hearing - part 2](#)
 EV-021 [Submission by Dr ul-Haq on the 16 April regarding issues to cover](#)
 EV-022 [Submission by Mr Bedford-Smith before hearing](#)
 EV-023 [Submission by Mr Bedford-Smith](#)
 No id [Agenda for the hearing is EV-015 above](#)
 assigned
 EV-024 [Submission by Mr Brown in lieu of attendance](#)
 EV-025 [Submission by Mr Brown in lieu of attendance \(updated\)](#)

- EV-026 [Additional submission by Mr Brown in lieu of attendance](#)
EV-027 [Submission by Network Rail prior to the hearing regarding car parking](#)
EV-028 [Correspondence from Worcestershire CC regarding Article 9 Annex 2 of DCO](#)
EV-029 [Update letter dated 16 April 2013 from the Ramblers Association regarding the proposed and temporary diversion of footpaths](#)
No id [Letter from Bond Dickinson dated 9 May 2013 - see REP-078](#)
assigned

ADDITIONAL SUBMISSIONS

- AS-001 [Dalcour Maclaren withdrawal of their relevant representation and Interested Party status](#)
AS-002 [Level 3 Communications withdrawal of their relevant representation and IP status](#)
AS-003 [Correspondence from the Planning Inspectorate to Tutnall & Cobley Parish Council](#)
AS-004 [HSE request to be an Interested Party](#)

- End of Examination Library -

APPENDIX E- ABBREVIATIONS

AP	Affected Person
BoR	Book of Reference
DCO	Development Consent Order
dB	Decibel
DfT	Department for Transport
EA	Environment Agency
EIA	Infrastructure Planning (Environmental Impact Assessment)
Regulations	Regulations 2009 (as amended)
EM	Explanatory Memorandum
ExA	Examining authority
ha	Hectare
IPC	Infrastructure Planning Commission
LIR	Local Impact Report
NE	Natural England
NERC	Natural Environment and Rural Communities Act 2006
NPPF	National Planning Policy Framework
NSIP	Nationally Significant Infrastructure Project
PA 2008	Planning Act 2008 as amended by the Localism Act 2011
PSED	Public Sector Equality Duty
PPS	Planning Policy Statement
RUS	Route Utilisation Strategy
SNCB	Statutory Nature Conservation Body
SOCG	Statement of Common Ground
SSSI	Site of Special Scientific Interest

APPENDIX F – DEVELOPMENT CONSENT ORDER

THE NETWORK RAIL (REDDITCH BRANCH ENHANCEMENT) ORDER

Application Ref: TR040005

Draft Development Consent Order (revised 30 July 2013)

Document Ref:	3.1.E
Author:	Bond Dickinson LLP
Date/initial approval:	11 April 2013: RG
Revision history:	Rev F, 30 July 2013 – recommendation Rev E, 9 May 2013 – examination (revised post DCO hearing) Rev D, 11 April 2013 – examination (revised requirements, protective provisions) Rev C, 2 April 2013 – examination (requested in advance of IS hearing) Rev B, 7 March 2013 – examination (required by R8 letter) Rev A, 12 February 2013 – examination (responses to first WQs) Rev 1, 24 August 2012 – submission version Rev 00, 12 July 2012 – consultation draft Rev 0, 11 April 2012 – consultation draft

INFRASTRUCTURE PLANNING

NATIONAL NETWORKS, RAILWAYS

The Network Rail (Redditch Branch Enhancement) Order 201[]

<i>Made</i>	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i>	***

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009^(a), for an order under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008^(b):

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Network Rail (Redditch Branch Enhancement) Order 201[] and comes into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(c);

“the 1965 Act” means the Compulsory Purchase Act 1965^(d);

“the 1980 Act” means the Highways Act 1980^(e);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981^(f);

^(a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 S.I. 2012/635 and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 S.I. 2013/522.

^(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

^(c) 1961 c. 33. Section 2(2) was amended by section 193 of, and Paragraph 5 of Schedule 3 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1980 Act which are not relevant to this Order.

^(d) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

^(e) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

^(f) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

“the 1984 Act” means the Road Traffic Regulation Act 1984^(a);

“the 1990 Act” means the Town and Country Planning Act 1990^(b);

“the 1991 Act” means the New Roads and Street Works Act 1991^(c);

“the 2003 Act” means the Communications Act 2003 ^(d)

“the 2008 Act” means the Planning Act 2008;

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

“the access to works and traffic regulation plan” means the access to works and traffic regulation plan certified by the Secretary of State as the access to works and traffic regulation plan for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“the archaeological and historic impact assessment report” means the archaeological and historic impact assessment report certified by the Secretary of State as the archaeological and historic impact assessment report for the purposes of this Order;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commencement” means the first carrying out of a material operation within the meaning of section 56(4) of the 1990 Act for the construction of the authorised development and commence and commenced are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the design drawings” means the drawings titled (1) Engineering plans including existing services and new services, drainage and surface water management, (2) Section drawings, (3) Alvechurch station general arrangement, and (4) Landscaping plans, each submitted under regulation 5(2)(o) of the 2009 Regulations and together certified as the design drawings by the Secretary of State for the purposes of the Order;

“the ecological impact assessment report” means the ecological impact and assessment report certified by the Secretary of State as the ecological impact and assessment report for the purposes of this Order;

“electronic communications code” has the meaning given in section 137(8) of the 2003 Act

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the environmental reports” means the archaeological and historic impact assessment report; the ecological impact assessment report; the flood risk assessment; the land quality report; the noise assessment report; the visual impacts report and landscape plan/strategy; and the waste management plan;

“first open for use” means the date on which work No. 1 is first used for revenue earning purposes by the passage of passenger carrying railway vehicles;

^(a) 1984 c. 27.

^(b) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 c. 21, and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17.

to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.

^(c) 1991.c. 22. Section 48(3A) was inserted by Section 124 of the Local Transport Act 2008 (c. 26). Section 79(4), 80(4) and 83(4) are amended by s40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

^(d) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

“the flood risk assessment” means the flood risk assessment including a river basin management impact assessment and plan certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” has the same meaning as in the 1980 Act;

“the footpath stopping up and diversion plan” means the plans certified as the footpath stopping up and diversion plan by the Secretary of State for the purposes of this Order;

“highway” has the same meaning as in the 1980 Act;

“highway authority” means Worcestershire County Council as local highway authority or any successor highway authority;

“implementation plan” means a written plan agreed between Network Rail and the highway authority for creation of the agreed alternative footpaths;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“the land quality report” means the land quality report certified by the Secretary of State as the land quality report for the purposes of this Order;

“lead local flood authority” means the North Worcestershire Water Management Team and any successor flood authority;

“limits of deviation” means the limits of deviation referred to in article 6;

“maintain” and any of its derivatives include inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development and any derivative of “maintain” is to be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited;

“the noise assessment report” means the noise assessment report certified by the Secretary of State as the noise assessment report for the purposes of this Order;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“the Order limits” means the limits of deviation shown on the works plans and the limits of land to be acquired or used shown on the land plans;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981^(a);

“relevant planning authority” means Bromsgrove District Council or any successor planning authority;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority”, for the purposes of article 36, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“the visual impacts report and landscape plans/strategy” means the visual impacts report and landscape plans/strategy certified by the Secretary of State as the visual impacts report and landscape plans/strategy for the purposes of this Order;

“watercourse” includes all streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“the waste management plan” means the waste management plan certified by the decision-maker as the waste management plan for the purposes of this Order; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

^(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(4) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the relevant plans.

(5) References in this Order to numbered works are references to the works as numbered in Part 1 of Schedule 1.

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845^(a) are incorporated in this Order—

section 46 (crossing of roads – level crossings), subject to paragraph (4);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923^(b); and

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”.

(2) The following provisions of the Railways Clauses Act 1863^(c) are incorporated in this Order—

sections 5 and 7 (level crossings); and

section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

“the company” means Network Rail;

“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

“prescribed”, in relation to any such provision means prescribed by this Order for the purposes of that provision;

“the railway” means any railway authorised to be constructed by this Order and any other authorised development; and

“the special Act” means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there is substituted “provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

PART 2

Principal powers

^(a) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c.39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1968 (c.56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 1 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101), and section 31(6) of the Criminal Law Act 1977 (c.45), and sections 37 and 49 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1845 Act not relevant to this Order.

^(b) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c.19).

^(c) 1863 c. 92.

Development consent etc. granted by the Order

4.—(1) Subject to the provisions of this Order and to the requirements in Part 2 of Schedule 1 (requirements) attached to this Order Network Rail is granted development consent for the authorised development to be carried out within the Order limits.

(2) subject to article 6 (limits of deviation) the authorised development comprising the numbered works in Schedule 1 may only be constructed in the lines and situations shown on the works plans and the levels shown on the section drawings.

Maintenance of authorised development

5.— Network Rail may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of deviation

6.— In carrying out the authorised development comprising the works numbered in Schedule 1, Network Rail may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 1 metre upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

7.—(1) The provisions of this Order conferring powers on Network Rail have effect solely for the benefit of Network Rail.

(2) Paragraph (1) is—

- (a) subject to paragraph (5) of article 17 (compulsory acquisition of rights) of this Order; and
- (b) does not apply to the benefit of the consent granted by this Order for works for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

PART 3

Streets

Street works

8.—(1) Network Rail may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street
- (c) place apparatus under the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Public Rights of Way

9.—(1) With effect from the date of commencement, the sections of the public rights of way (being footpaths) specified in column 3 of Parts 1 and 2 of Schedule 3 and shown marked in red on the footpath stopping up and diversion plan are extinguished.

(2) With effect from the date Work No. 1 is first open for use, an alternative section of footpath specified in column 4 of part 1 of Schedule 3 and as shown marked by vertical zebra hatching on the footpath stopping up and diversion plan is created in accordance with the specification required by the relevant part of the implementation plan.

(3) Subject to paragraph (4), with effect from the date of commencement, the sections of the public rights of way (being footpaths) described in Schedule 4 part 1 and 2 and shown marked in orange on the footpath stopping up and diversion plan may be temporarily suspended until the date work No.1 is first open for use.

(4) The footpath referred to in column 3 of Part 1 of Schedule 4 may not be temporarily suspended until an alternative section of footpath described in Column 4 of Part 1 of Schedule 4 and as shown marked green on the footpath stopping up and diversion plan is provided for in accordance with the relevant part of the implementation plan.

(5) With effect from the date Work No. 1 is first open for use the section of temporary alternative footpath described in Column 4 of Part 1 of Schedule 4 will be extinguished.

(6) Section 31 of the Land Compensation Act 1961 does not apply to any part of any of the Order land that is subject to a public right of way.

(7) If on the date of commencement Network Rail has not taken entry on land that formed part of a public right of way referred to in paragraph (1) or vested in itself such land then Network Rail is deemed on commencement to have taken entry onto such land for the purposes of section 11(1) of the 1965 Act.

Application of the 1991 Act

10.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway will be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation the carrying out of street works under article 8 (street works) whether or not the carrying out of such works constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works), subject to paragraph (4);
- section 55 (notice of starting date of works), subject to paragraph (4);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) have effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Access to works

11.—Network Rail may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works) and shown on the access to works and traffic regulation plan; and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised development.

Agreements with street authorities

12.—(1) A street authority and Network Rail may enter into agreements with respect to—

- (a) the construction of any new street, including any structure carrying the street over or under a railway authorised by the Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 8(1) (street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between Network Rail and the street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

Supplemental powers

Discharge of water

13.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail pursuant to paragraph 1 must be determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) Network Rail must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose.

(4) Network Rail must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Network Rail must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

^(a) 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(7) This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010^(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Authority to survey and investigate land

14.—(1) Network Rail may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of Network Rail—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) on land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

Powers of acquisition

Compulsory acquisition of land

15.—(1) Network Rail may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of article 17 (compulsory acquisition of rights) and paragraph (8) of article 23 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

16.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and

^(a) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 S.I. 2011/2043

(b) no declaration may be executed under section 4 of the 1981 Act as applied by article 19 (Application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

17.—(1) Subject to paragraph (2) Network Rail may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 15 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc., may be acquired) Network Rail's powers of compulsory acquisition are limited to the acquisition of such new rights in the land as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) where Network Rail acquires a right over land Network Rail is not required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

(7) Where the power in paragraph (5) is transferred to statutory undertaker and the statutory undertaker—

(a) is liable to pay compensation for the exercise of that power, and

(b) fails to discharge that liability,

the liability is enforceable against Network Rail.

(8) Nothing in this article affects any agreement between Network Rail and any statutory undertaker receiving the benefit of any power transferred by the operation of Article 17(5).

Private rights

18.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under the Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

(a) as from the date of the acquisition of the right by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by Network Rail which, being within the limits of land which may be acquired or used shown on the land plans and required for the purposes of this Order, are extinguished on the appropriation of the land by Network Rail for any of those purposes.

(4) Subject to the provisions of this article, all private rights over land of which Network Rail takes temporary possession under this Order are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 25 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by Network Rail before—

- (i) the completion of the acquisition of the land or the acquisition of rights over or affecting the land;
- (ii) Network Rail's appropriation of it;
- (iii) Network Rail's entry onto it; or
- (iv) Network Rail's taking temporary possession of it, that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between Network Rail and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

19.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.

(8) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

20.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 15 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of or rights in the subsoil of or the airspace over land under paragraph (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 21 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

21.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Network Rail a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless Network Rail agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which Network Rail is authorised to acquire compulsorily under this Order.

(9) Where by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, Network Rail must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

22.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), Network Rail may exercise any power conferred by paragraph (1) in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

23.—(1) Network Rail may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
 - (b) remove any buildings and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access), security fencing and buildings on that land; and
 - (d) construct any works specified in relation to that land in column 3 of Schedule 8, or any other mitigation works.
- (2) Not less than 28 days before entering on and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.
- (3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 8; or
 - (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail is not required to—
- (a) replace a building removed under this article;
 - (b) restore the land on which any works have been constructed under paragraph (1)(d) if the owners and any occupiers consent to the works remaining; or
 - (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.
- (5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Network Rail may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that Network Rail is not precluded from—
- (a) acquiring new rights over any part of that land under article 17 (compulsory acquisition of rights); or
 - (b) acquire any part of the subsoil or of airspace over (or rights in the subsoil or of airspace over) of that land under article 20 (acquisition of subsoil or airspace only).
- (9) Where Network Rail takes possession of land under this article, Network Rail is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

24.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, Network Rail may—

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise Network Rail to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(4) Network Rail may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers and electronic communications code network operators

25.—(1) Subject to the provisions of Schedule 10 (protective provisions), Network Rail may—

- (a) acquire compulsorily, or acquire new rights over the land belonging to statutory undertakers and electronic communications code network operators shown on the land plans within the limits of the land to be acquired or used and described in the book of reference; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers and electronic communications code network operators over or within the Order land.

Recovery of costs of new connections

26.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 25 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus will be entitled to recover from Network Rail compensation

in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 25, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

Operations

Operation and use of railways

27.—(1) Network Rail may operate and use the railway and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 of the Railways Act 1993^(a) (the provision of railway services).

Felling or lopping of trees

28.—(1) Network Rail may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to passengers or other persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), Network Rail may do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

PART 7

Miscellaneous and general

Operational land for purposes of the 1990 Act

29.— Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

30.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(b) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within

^(a) 1993 c.43. There are amendments to this Act which are not relevant to this Order.

^(b) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(a); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), does not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised development.

Traffic regulation

31.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, Network Rail may, at any time for the purposes of the construction of the authorised development permit or prohibit vehicular access in the manner specified in Schedule 9 (traffic regulation) on those roads specified in column (1) and to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, Network Rail may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
 - (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
 - (c) authorise the use as a parking place of any road;
 - (d) make provision as to the direction or priority of vehicular traffic on any road; and
 - (e) permit or prohibit vehicular access to any road,
- either at all times or at times, on days or during such periods as may be specified by Network Rail.

(3) Network Rail must not exercise the powers of paragraphs (1) and (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by Network Rail under paragraph (1) or (2)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

^(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 9 (traffic regulation)) to which the prohibition, restriction or other provision is subject; and

- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004^(a) (road traffic contraventions subject to civil enforcement).
- (5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time prior to the opening of the authorised development for use.
- (6) Before complying with the provisions of paragraph (3) Network Rail must consult the chief officer of police and the traffic authority in whose area the road is situated.
- (7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Application of the Land Compensation Act 1973

32.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973^(b) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised development as if that railway as provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised development were public works for the purposes of that section.

Certification of plans, etc.

33.—(1) Network Rail must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access to works and traffic regulation plan;
- (b) the book of reference;
- (c) the design drawings;
- (d) the environmental reports;
- (e) the footpath stopping up and diversion plan;
- (f) the land plans; and
- (g) the works plans

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

34.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

^(a) 2004 c.18.

^(b) 1973 c.26. Section 20 was amended by subsection (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c.27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c.66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c.42). There are other amendments to the 1973 Act which are not relevant to this Order.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement may be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article must not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

35.— Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Procedure in relation to further approvals, etc.

36.—(1) In this article—

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

^(a) 1978 c.30.

(2) Where an application is made to the relevant planning authority, the highway authority, or the highway authority acting in the capacity of street authority or traffic authority, for any consent, agreement or approval required under any of the provisions of this Order such application must, where appropriate, be accompanied by proper and sufficient plans of the proposal and such consent, agreement or approval must, if given, be in writing and may be given subject to such reasonable terms and conditions as the authority may require and may not be unreasonably withheld.

(3) If, within 28 days after the application has been submitted to the authority in accordance with this article, it has not intimated its disapproval and the grounds of disapproval, the authority is deemed to have approved the content of the application.

(4) In the event of any refusal or disapproval by the authority, Network Rail may resubmit a revised application, or revised plans in support of the original application, and, in that event, if the authority has not intimated its refusal or disapproval and the grounds of refusal or disapproval within 28 days of the revised application or of revised plans being submitted, it is deemed to have given its consent or agreement to, or its approval of, the revised application or plans.

(5) Network Rail must not carry out the proposal until such plans have been approved (or deemed to have been approved) or settled by arbitration.

(6) Where an application is made to the owner of a sewer or drain for any consent or approval required under article 13, such consent or approval may not be unreasonably withheld or delayed.

Further provisions, as to approvals, etc, under Part 2 of Schedule 1

37.—(1) Where the application is for a consent, agreement or approval required by a requirement under Part 2 of Schedule 1, the following provisions apply, so far as they relate to a consent agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of a planning permission—

(a) sections 78 (other than paragraph (a) of subsection (2)) and 79 of the 1990 Act (right of appeal in relation to planning decisions)

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Protective provisions

38.— Schedule 10 (protective provisions) has effect.

Saving for regulated rights etc.

39.— Nothing in this Order affects any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part 1 of the Railways Act 1993.

Signed by authority of the Secretary of State for Transport

[] 201[]

[]
[Designation]
[Department]

SCHEDULES

SCHEDULE 1

Article 4

PART 1

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 25 of the 2008 Act comprising:

In the county of Worcestershire, district of Bromsgrove

Work No. 1 – the construction of a new permanent railway commencing at ordnance survey national grid reference point SP4021 2726, being a point 420 metres north of the over bridge of the highway of Station Road, Alvechurch, over the Barnt Green to Redditch Railway and running southwards parallel to the existing Barnt Green to Redditch Railway for 3470 metres before terminating at ordnance survey national grid reference point SP4036 2692, being a point 10 metres north of the under bridge carrying the Barnt Green to Redditch Railway over the highway of Weights Lane, Redditch; including permanent way (rail tracks), railway switch and crossing track.

Work No. 1 includes widening the existing embankment carrying the Barnt Green to Redditch Railway on its eastern and western sides supported in part by gabion basket retaining walls; extensions to culverts under the Barnt Green to Redditch Railway; the widening of existing cuttings, in part, with retaining walls; and the reconstruction of culverts.

Associated development within the meaning of section 115(2) of the 2008 Act and within Order limits comprising –

Work No. 2 – construction of a new station platform (and including fencing, lighting columns and shelters) to the west of the existing station platform at Alvechurch Railway station and immediately to the south of the over bridge of the highway of Station Road, Alvechurch, over the Barnt Green to Redditch Railway, at ordnance survey national grid reference point SP4023 2721 including the construction of fences, lighting columns and shelters.

Work No. 3 – construction of a new footbridge to connect from the existing platform at Alvechurch Railway station to Work No.2, at ordnance survey national grid reference point SP4023 2721 including stairs and lift accesses to the bridge from both the existing platform and from Work No 2.

Work No. 4 - construction of a diverted route for public footpath 579(C) commencing at ordnance survey national grid reference point SP 02282 71974, being a point on the existing alignment of footpath 579(C) approximately 14 metres to the south west of the southern end of the existing Alvechurch railway station platform, and proceeding northwards and then eastwards towards the railway for a length of 88 metres to ordnance survey national grid reference point SP 02277 72055, being a point providing access to Work No. 3.

Work No. 5 - construction of a diverted route for public footpath 579(C) commencing at ordnance survey national grid reference point SP 02288 72092, being a point on the existing Alvechurch Railway station platform where the diverted footpath connects with Work No. 3, and proceeding southwards for 104 metres to join the existing alignment of footpath 579(C) at ordnance survey national grid reference point SP 02305 71990.

Work No.5a – construction of a temporary footpath (including temporary bridge over stream) commencing at ordnance survey national grid reference point SP 0230 7182, being a point to the south of the existing Alvechurch Railway station platform, and proceeding southwards for 15 metres to join the existing alignment of footpath 520(C) at ordnance survey national grid reference point SP 0230 7181.

Work No. 6 – A signal equipment building to be used to house signalling and telecommunications equipment together with its hardstanding, access and compound to the west of the existing Barnt Green to Redditch Railway to the north of Alvechurch Railway station at ordnance survey national grid reference point SP 4022 2722.

Work No. 7 - A signal equipment building to be used to house signalling and telecommunications equipment together with its hardstanding, access and compound to the west of the existing Barnt Green to Redditch Railway at Butler’s Wood, at ordnance survey national grid reference point SP4029 2701.

Work No. 8 - a permanent access road commencing on the western side of the Barnt Green to Redditch Railway at a point to the north east of Weights Lane, Redditch, at ordnance survey national grid reference SP 0332 6963, and proceeding parallel to the railway on its western side for 127 metres north-west to ordnance survey national grid reference SP 0325 6973, then turning south-west for 135 metres to join the existing track north of Weights Lane at ordnance survey national grid reference point SP 0317 6963.

And in connection with such works further associated development within the Order limits consisting of –

- (a) Electrical equipment, power supply cubicles, cables, telecommunications cables and equipment and signalling works;
- (b) Ramps, means of access (including temporary haul roads) and construction compounds;
- (c) Embankment, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, fences and culverts;
- (d) Works to alter the position of apparatus, including mains, sewers, drains and cables;
- (e) Works to interfere with a water course other than a navigable water course;
- (f) Landscaping and other works (including the creation of ponds) to mitigate any adverse effects of the construction, maintenance or operation of the authorised development as are described in the visual impacts report and landscape plans/strategy and the ecological impact assessment report;
- (g) Works for the benefit or protection of land affected by the authorised development;
- (h) Works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (i) Works for the temporary diversion of public footpaths shown in the footpath stopping up and diversion plan; and
- (j) Such other works, including working sites and works compounds as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which fall within the scope of the environmental reports.

PART 2

Article 4

REQUIREMENTS

CONTENTS

Interpretation

1.— In this Part of this Schedule—

“the CR-E” means Network Rail’s Contract Requirements – Environment, Issue 6, September 2011;

“culvert 11” means the culvert referred to as culvert 11 on the Engineering plans including existing services and new services, drainage and surface water management;

“culvert 13” means the culvert referred to as culvert 13 on the Engineering plans including existing services and new services, drainage and surface water management;

“the Historic Environment Planning Officer” means the Historic Environment Planning Officer for the County of Worcestershire; and

“operational railway land” means land required permanently for the construction of Work No. 1 and any existing railway corridor including associated works, structures, embankments, cuttings, bridges and culverts.

Time limits

2.— The authorised development must be commenced within 5 years of the date of this Order.

Development in accordance with approved details

3.—(1) The authorised development must be carried out in accordance with the design drawings unless otherwise approved by the relevant planning authority.

(2) Work No.2 and Work No.3 must be carried out in accordance with the Alvechurch station general arrangement drawings, save for any minor amendments to the appearance, layout, scale or landscaping of those works approved by the relevant planning authority prior to commencement of those works.

Construction Environmental Management Plan

4.—(1) The authorised development must not be commenced until a written construction environmental management plan (CEMP) has been submitted to and approved by the relevant planning authority in consultation with the Health Protection Agency.

(2) The CEMP must be in accordance with the environmental reports.

(3) The CEMP must reflect the CR-E, and must include an implementation timetable.

(4) The CEMP must in particular include the following:

(a) an external communications plan;

(b) a pollution incident prevention and control plan;

(c) a site waste management plan;

- (d) a traffic management plan including a construction traffic code of practice;
 - (e) a nuisance management plan regarding noise and vibration, dust, air pollution and lighting; and
 - (f) an ecological management plan.
- (5) The construction traffic code of practice under (4)(d) must in particular address:
- (a) construction traffic routes and operational hours;
 - (b) measures to minimise dust and mud;
 - (c) abnormal loads; and
 - (d) compliance of drivers with national driving standards and project-specific restrictions.
- (6) The CEMP must in particular require:
- (a) adherence to the relevant Pollution Prevention Guidelines PPG1, PPG5, PPG6 and PPG21;
 - (b) except on operational railway land (to which no restriction on working hours applies under this Order), adherence to
 - (i) normal daytime working hours (7am to 6pm Monday to Friday and 8am to 2pm on Saturday), and
 - (ii) no working on Sundays, Bank or Public Holidays
 except for such working outside those times which has been notified to the relevant planning authority and affected residents by an agreed notification procedure in compliance with Section 61 of the Control of Pollution Act 1974 and in full accordance with the nuisance management plan; and
 - (c) adherence to the scheme of temporary footpaths as approved by the highway authority under requirement 18(1)(d).
- (7) The authorised development must be carried out in accordance with the approved CEMP and the CR-E.

Landscaping

5.—(1) The authorised development must not be commenced until a written landscaping scheme reflecting the visual impacts report and landscape plan/strategy has been submitted to and approved by the relevant planning authority.

(2) The landscaping scheme must reflect the mitigation measures described in the visual impacts report and landscape plan/strategy and must include details of—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) implementation timetables for all landscaping; and
- (d) proposals to take account of the presence of trees with trunks of a diameter of 100 mm or more and to minimise the loss of such trees.

Implementation and maintenance of landscaping

6.—(1) All landscaping work must be carried out in accordance with the scheme and implementation timetable approved under requirement 5.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Re-use of excavated materials

7.— The authorised development must not be commenced until Network Rail has agreed with the relevant planning authority a scheme for the recovery and re-use of excavated material in accordance with principles set out in section 4 of the waste management plan. The scheme must in particular have regard to the principles set out in paragraph 4.1 of the waste management plan.

Highway accesses

- 8.—(1) No part of the works numbered in Part 1 of Schedule 1 may commence until—
- (a) for that part details of the siting, design and layout of any new or altered, permanent or temporary, access, and any temporary haul roads, have, after consultation with the relevant planning and highway authority, been submitted to and approved by the relevant planning authority; and
 - (b) the approved highway alterations and improvements, including any altered or new accesses and any temporary haul roads, for that part have been implemented.

Car parking at Alvechurch station

9.— No part of the authorised development relating to Alvechurch station may be commenced until a schedule of works required at Alvechurch station car park to provide a facility for the parking of 50 cars (minimum) has been submitted to and approved by the relevant planning authority. The works must be carried out as approved.

Archaeology

10.—(1) The authorised development must not be commenced until a written scheme for the investigation of any areas of archaeological interest identified by the archaeological and historic impact assessment report has, after consultation with the Historic Environment Planning Officer, been submitted to and approved by the relevant planning authority.

(2) The scheme must be in accordance with the measures described in paragraph 4.2.1 of the archaeological and historic impact assessment report and must identify areas where field work or a watching brief is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) The scheme must include a programme for post investigation assessment and make provision for the publication and dissemination as well as for the archive deposition of the analysis and records of the site investigation.

(4) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant planning authority and in accordance with the measures described in paragraph 4.2.1 of the archaeological and historic impact assessment report.

(5) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

(6) The site investigation and post investigation assessment must be completed in accordance with the programme set out in the approved written scheme of investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Ecological Management

11.—(1) No part of the authorised development may be commenced until a written ecological management plan (which will form part of the CEMP), reflecting the survey results and ecological mitigation measures specified in the ecological impact assessment report and including the appointment of an ecological clerk of works, has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

(3) Areas of work exclusion zones must be agreed with the relevant planning authority prior to the commencement of the authorised development. No part of the authorised development in the vicinity of any tree, hedgerow, grassland, watercourse, ditch or woodland habitat identified as requiring a work exclusion zone may be carried out until measures to protect the relevant work exclusion zone have been implemented to the reasonable satisfaction of the relevant planning authority. The work exclusion zone must be maintained for the duration of the construction of the authorised development in the vicinity of the relevant work exclusion zone.

(4) The ecological management plan must in particular include:

- (a) a description of alterations required to culvert 11 and culvert 13 to facilitate the passage of fish and other aquatic fauna through these culverts; and
- (b) a description of the required realignment of fencing around culverts to make them more accessible to otters and other mammals

and these enhancements must be implemented in accordance with the details specified in the ecological management plan.

Mitigation of effects on protected species

12.—(1) No part of authorised development may be commenced within the 500m buffer zone for ponds known to support great crested newts, and shown on Figure 5.9.6 (Appendix 2A) of the ecological impact assessment report, until the relevant planning authority, in consultation with Natural England, has certified that the mitigation works described in paragraphs 5.5.8-5.5.18 of the ecological impact assessment report have been carried out to their reasonable satisfaction.

(2) The ecological management plan required under requirement 11 must include provision for a further site investigation in respect of white clawed crayfish prior to the commencement of any works in the vicinity of Scarfield Stream (culvert 11) and Shortwood Dingle Stream (culvert 13). If white clawed crayfish are found, then a scheme for mitigating impacts on them must be included in the ecological management plan.

Trees

13.—(1) The authorised development may not be commenced until Network Rail has provided to the relevant planning authority and the relevant planning authority has approved a plan indicating trees within the Order limits that have to be removed for the construction of the authorised development. No trees save for those identified on the approved plan may be removed for the construction of the authorised development without the consent of the relevant planning authority.

(2) The plan submitted must also identify areas of tree protective fencing to be erected prior to commencement of the authorised development. The fencing shown on the approved plan is to be maintained during the construction period to the reasonable satisfaction of the relevant planning authority. At the end of the construction period, the fencing must be removed in total to the satisfaction of the relevant planning authority.

Trees – removal of crowns and other alterations

14.— No trees may be lopped, chopped or altered for the construction of the authorised development until the relevant planning authority has approved a scheme for the lopping, chopping or alteration of that tree. The works to the tree must be carried out to the reasonable satisfaction of the relevant planning authority.

Temporary fencing

15.— Prior to the commencement of the authorised development Network Rail must apply to the relevant planning authority for its approval of a plan indicating the extent of temporary fencing that must be erected for the authorised development. No part of the authorised development within an area where temporary fencing is so indicated may be commenced without that temporary fencing having first been erected. The temporary fencing must be retained and maintained to the reasonable satisfaction of the relevant planning authority until the cessation of works in that area. After cessation of works in that area the relevant fencing must be removed to the satisfaction of the relevant planning authority.

Drainage

16.—(1) The authorised development must not be commenced until a detailed drainage plan showing all new surface water drainage has been approved by the relevant planning authority in consultation with the lead local flood authority. The details must be in accordance with the details of paragraph 5.4.6 of the flood risk assessment and demonstrate that:

- (a) all discharges to watercourses from railway drainage systems should be attenuated to a rate not exceeding the existing rate of runoff, i.e. 5 litres per second per hectare; and
- (b) all discharges made from railway drainage systems should be discharged downstream of existing watercourse culverts wherever possible to reduce any impact on the capacity of each of the respective culverts.

(2) The authorised development must be constructed in accordance with the approved details.

Contaminated land and groundwater

17.—(1) The additional investigation of Order land potentially affected by the Alvechurch dredging landfill that is recommended in the land quality report at paragraph 7.2 must be carried out before commencement of development. The results of the additional investigation and the implementation measures and monitoring requirements identified in the land quality report must be incorporated in the CEMP, and in particular the site waste management plan.

(2) If during construction of the authorised development contaminated material is encountered in excavations of Order land that does not fall within paragraph (1), then work in the vicinity of that contamination must be suspended and additional soil samples must be taken for assessment. Any additional remediation required as a result of the additional contamination must be approved by the relevant planning authority in consultation with the Environment Agency and carried out to the reasonable satisfaction of the relevant planning authority.

Footpath diversions – implementation plan

18.—(1) Prior to the commencement of the authorised development Network Rail must provide to the highway authority for their approval the implementation plan which must include:

- (a) the specification for the new footpath forming part of footpath 579(C) and comprising part of the authorised development,
- (b) the specification for the temporary footpath in substitution for part of footpaths 520 (C) and 580 (C);
- (c) a programme for the opening of the diverted section of footpath 579(C) and re-opening of footpaths 520(C), 580 (C) and 523(C) upon the cessation of that part of the authorised development requiring the suspension or diversion of those footpaths, and
- (d) a scheme of temporary paths to allow use of footpath 579(C) during daylight hours following the closure of the existing right of way and prior to the opening of the diverted footpath save when it is previously agreed by the highway authority that such use is not reasonably practicable due to the works to implement the authorised development meaning that such use would compromise the safety of the public using the temporary path in substitution for the footpath.

(2) The authorised development must be carried out in accordance with the approved implementation plan.

Requirement for written approval

19.— Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

20.— With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken

to include any amendments that may subsequently be approved in writing by the relevant planning authority.

SCHEDULE 2

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of Worcestershire, district of Bromsgrove	Station Road (Alvechurch)
County of Worcestershire, district of Bromsgrove	Grange Lane
County of Worcestershire, district of Bromsgrove	Weights Lane

SCHEDULE 3

Article 9

FOOTPATHS TO BE STOPPED UP

PART 1

FOOTPATH FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Footpath to be substituted</i>
County of Worcestershire, district of Bromsgrove	Footpath 579(C) to the South of Alvechurch Station where it crosses the Barnt Green to Redditch Railway	Approximately 26 metres of footpath 579(C) between the point marked 'A' and the point marked 'B1'; and approximately 49 metres of footpath 579(C) between the point marked 'A' and the point marked 'B2', as are both shown red on the footpath stopping up and diversion plan	Approximately 248 metres of new footpath 579(C) shown with vertical zebra hatching on the footpath stopping up and diversion plan

PART 2

FOOTPATH FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
County of Worcestershire, district of Bromsgrove	Footpath 523(C) to the west of the Barnt Green to Redditch Railway and to the East of Butler's Wood Cottage	Approximately 0.5 metres of footpath 523(C) shown red on the footpath stopping up and diversion plan

SCHEDULE 4

Article 9

FOOTPATHS TO BE TEMPORARILY SUSPENDED

PART 1

FOOTPATHS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED DURING SUSPENSION

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be temporarily suspended</i>	<i>(3)</i> <i>Extent of temporary suspension</i>	<i>(4)</i> <i>Temporary Footpath to be substituted</i>
County of Worcestershire, district of Bromsgrove	Footpath 580(C) to the South of Alvechurch Station and east of the Barnt Green to Redditch Railway	Approximately 6 metres of footpath 580(C) between the point marked 'C' and the point marked 'C1'; and approximately 6 metres of footpath 580(C) between the point marked 'C' and the point marked 'C2', as are both shown orange on the footpath stopping up and diversion plan	Approximately 9 metres of footpath 580(C) shown green between the points marked 'C' and 'C3' on the footpath stopping up and diversion plan
County of Worcestershire, district of Bromsgrove	Footpath 520(C) to the South of Alvechurch Station and east of the Barnt Green to Redditch Railway	Approximately 8 metres of footpath 520(C) between the point marked 'C1' and the point marked 'E'; and approximately 5 metres of footpath 520(C) between the point marked 'C2' and the point marked 'D', as are both shown orange on the footpath stopping up and diversion plan	Approximately 6 metres of footpath 520(C) shown green between the points marked 'C3' and 'E' on the footpath stopping up and diversion plan

PART 2

FOOTPATHS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED DURING SUSPENSION

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be temporarily suspended</i>	<i>(3)</i> <i>Extent of temporary suspension</i>
County of Worcestershire, district of Bromsgrove	Footpath 523(C) to the west of the Barnt Green to Redditch Railway at Butler's Wood Cottage	Approximately 68 metres of footpath 523(C) shown orange on the footpath stopping up and diversion plan
County of Worcestershire, district of Bromsgrove	Footpath 522(C) to the east of the Barnt Green to Redditch Railway at Butler's Wood Cottage	Approximately 10 metres of footpath 522(C) shown orange on the footpath stopping up and diversion plan

SCHEDULE 5

Article 11

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
County of Worcestershire, district of Bromsgrove	Vehicular access to Station Road, Alvechurch from the North for construction traffic at the point numbered A on the access to works and traffic regulation plan (ordnance survey national grid reference point SP 0223 7217)
County of Worcestershire, district of Bromsgrove	Vehicular access to Station Road, Alvechurch from the South for construction traffic at the point numbered B on the access to works and traffic regulation plan (ordnance survey national grid reference point SP 0223 7216)
County of Worcestershire, district of Bromsgrove	Vehicular access to Grange Lane from the North for construction traffic at the point numbered C on the access to works and traffic regulation plan (ordnance survey national grid reference point SP 0214 7119)
County of Worcestershire, district of Bromsgrove	Vehicular access to Grange Lane from the South for construction traffic at the point numbered D on the access to works and traffic regulation plan (ordnance survey national grid reference point SP 0214 7118)
County of Worcestershire, district of Bromsgrove	Vehicular access to Weights Lane from the North for construction traffic at the point numbered E on the access to works and traffic regulation plan (ordnance survey national grid reference point SP 0338 6939)
County of Worcestershire, district of Bromsgrove	Vehicular access to Grange Lane from the North for construction traffic at the point numbered F on the access to works and traffic regulation plan (ordnance survey national grid reference point SP 0382 6927)

SCHEDULE 6

Article 17

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
40	To pass and repass with or without vehicles, plant and machinery to access adjoining land for construction, operation and maintenance of the authorised development
43	To pass and repass with or without vehicles, plant and machinery to access adjoining land for construction, and maintenance of new ponds on adjoining land together with the inspection and monitoring of protected species in the new ponds
55, 65, 66	To pass and repass with or without vehicles, plant and machinery to access adjoining land for construction, operation, and maintenance of the authorised development

SCHEDULE 7

Article 17

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1.— The enactments for the time being in force with respect to compensation for the compulsory purchase of land will apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973 has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over land consisting”;
- (b) for the word “severance” there are substituted the words “right over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right proposed”; and
- (d) for the words “part is” there are substituted the words “right is”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act will apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4.— For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5.— For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs, the Network Rail Redditch Branch Enhancement Order 201[](a) (“the Order”) must , in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.
- (2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section must be determined by the tribunal.
- (3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6.— The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

is so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7.— Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8.— Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. — Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 8

Article 23

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Location	<i>(2)</i> Number of land shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
County of Worcestershire, district of Bromsgrove, to the north of Station Road, Alvechurch and to the west of the Barnt Green to Redditch Railway	2	Worksite, haul road, and access for construction of the authorised development	Work No. 1
County of Worcestershire, district of Bromsgrove, to the south of Station Road, Alvechurch and to the west of the Barnt Green to Redditch Railway	5, 8, 10	Worksite, haul road, construction compound and access for construction of the authorised development	Works Nos. 1, 2,3 and 4
County of Worcestershire, district of Bromsgrove, to the south of Alvechurch Station and to the east of the Barnt Green to Redditch Railway	11, 13	Worksite, , construction site for culvert works and construction of new drain and temporary diversion of footpath and access for construction of the authorised development	Works Nos. 1 and 5a
County of Worcestershire, district of Bromsgrove, to the south of Alvechurch Station, to the north of Grange Lane Alvechurch and to the west of the Barnt Green to Redditch Railway	18	Worksite, construction compound, haul road and access for construction of the authorised development	Work No. 1
County of Worcestershire, district of Bromsgrove to the north of Grange Lane, Alvechurch and to the east of the Barnt Green to Redditch Railway	19	Worksite, construction site for embankment strengthening and access for construction of the authorised development	Work No. 1
County of Worcestershire, district of Bromsgrove to the south of Grange Lane, Alvechurch and to the east of the Barnt Green to Redditch Railway	24, 25	Worksite, construction compound, haul road and access for construction of the authorised development	Work No. 1
County of Worcestershire, district of Bromsgrove to the south of Grange Lane, Alvechurch and to the east of the Barnt Green to Redditch Railway	28	Worksite, construction site for culvert works and access for construction of the authorised development	Work No. 1
County of	30, 71	Worksite, haul road	Work No. 1

Worcestershire, district of Bromsgrove to the south of Grange Lane, Alvechurch, to the north of Weights Lane, Redditch and to the east of the Barnt Green to Redditch Railway		construction compound (including site office) and access for construction of the authorised development	
County of Worcestershire, district of Bromsgrove to the north Butlers Wood Cottage and to the east of the Barnt Green to Redditch Railway	32	Worksite, construction site for culvert works and access for construction of the authorised development	Work No. 1
County of Worcestershire, district of Bromsgrove to the north of Weights Lane, Redditch and to the west of the Barnt Green to Redditch Railway	41,47, 56	Worksite, construction compound and access for construction of the authorised development	Work No. 1

SCHEDULE 9

Article 31

TRAFFIC REGULATION

Prohibition of driving

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Notes</i>
Station Road, Alvechurch	Area shown hatched on the the access to works and traffic regulation plan	Temporary No Waiting restrictions and provison of temporary traffic control by way of traffic lights to allow for safe access to highway by construction traffic associated with the authorised development.
Grange Lane, Alvechurch	Area shown hatched on the the access to works and traffic regulation plan	Temporary No Waiting restrictions and Provison of temporary traffic control by way of traffic lights to allow for safe access to highway by construction traffic associated with the authorised development.

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER, PETROLEUM AND SEWERAGE UNDERTAKERS

1.— For the protection of the undertakers referred to in this part of this Schedule the following provisions, unless otherwise agreed in writing between Network Rail and the undertaker concerned, have effect.

2.— In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of Esso Petroleum Company Limited, any pipeline (including such apparatus and works as are specified in section 65(2) of the Pipe-lines Act 1962 and all protective wrappings, sleeves and slabs) together with ancillary cables and markers;
- (d) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (e) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991^(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means—

- (f) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (g) a gas transporter within the meaning of Part 1 of the Gas Act 1986^(c);
- (h) Esso Petroleum Company Limited;
- (i) a water undertaker within the meaning of the Water Industry Act 1991; and
- (j) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

^(a) 1989 c. 29.

^(b) 1991 c. 56.

^(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

3.— This Part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4.— Regardless of any provision in this Order or anything shown on the land plans, Network Rail must not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) Network Rail must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator must—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 5(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by Network Rail under paragraph 5(2).

(5) Nothing in this paragraph precludes Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, Network Rail must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, Network Rail must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10.— Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

11.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between Network Rail and the operator, have effect.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act^(a);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

^(a) See section 106.

“operator” means the operator of an electronic communications code network.

12.— The exercise of the powers of article 25 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984^(a).

13.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

Network Rail must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 35 (arbitration).

14.— This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

15.— Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an operator in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 3

PROTECTION FOR THE CANAL AND RIVER TRUST

Interpretation

1.—(1) For the protection of CRT the following provisions of this part of this Schedule, unless otherwise agreed in writing between Network Rail and CRT, have effect.

(2) In this part of this Schedule—

"car park" means the land forming part of plot 2 of the lands scheduled in the book of reference that consists of a car park;

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“construction”, in relation to any specified work or protective work, includes—

(a) the execution and placing of that work; and

^(a) 1984 c.12.

(b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of CRT and, without prejudice to the generality of that meaning, includes—

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network);

(g) any interference with the exercise by any person of rights over CRT’s network;

“the engineer” means an engineer appointed by CRT for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are construed accordingly

“protective work” means a work constructed under paragraph 6(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the waterway” means the Worcester and Birmingham Canal, and includes any works, lands or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with that canal.

Powers requiring CRT’s consent

2.—(1) Network Rail must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of CRT provided that the temporary obstruction of the car park is hereby deemed to be with the consent of CRT

(2) Network Rail must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of CRT.

(3) Network Rail must not exercise the powers conferred article 14 (authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of CRT.

(4) Network Rail must not exercise the powers conferred by sections 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 3 to this Order (streets to be stopped up), so as to divert any right of access to the waterway, but such right of access may be diverted with the consent of CRT.

(5) The consent of CRT pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 13 (discharge of water) may include conditions—

(a) specifying the maximum volume of water which may be discharged in any period; and

(b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to Network Rail to require Network Rail to suspend the discharge of water or

reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT.

Vehicles, plant and machinery

3.— Network Rail must not use any land or property of CRT forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) within Plots 2 or 3 of the lands referred to in the Book of Reference; or
- (b) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and
- (c) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to CRT, its officers and agents and all other persons lawfully on such land or property, but nothing in this paragraph applies in relation to anything done in accordance with any approval given by CRT under paragraph 6.

Fencing

4.— Where so required by the engineer Network Rail must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

5.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works Network Rail must bear the reasonable cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by CRT and Network Rail, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of Network Rail which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey Network Rail must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of Network Rail which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonable practicable with all such information as he may reasonably require with regard to such existing works of Network Rail and to the specified works or the method of their construction.

(3) The reasonable costs of the survey include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both CRT and Network Rail at no cost to CRT.

Approval of plans, protective works etc.

6.—(1) Network Rail must before commencing construction of any specified work comprising part of Work No. 1 of the authorised development including any temporary works supply to CRT proper and sufficient plans of that work and such further particulars available to it as CRT may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 30 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify on land held or controlled by CRT or Network Rail and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act —

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works are constructed by Network Rail or by CRT at Network Rail's request with all reasonable dispatch

and Network Rail must not commence the construction of a specified work until the engineer has notified Network Rail that the protective works have been completed to the engineer's reasonable satisfaction not to be unreasonably withheld or delayed.

(4) In the event that Network Rail fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and Network Rail must reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

7.— Without prejudice to its obligations under the foregoing provisions of this part of this Schedule Network Rail must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works comprising Work No. 1, including the materials to be used for their construction; and
- (b) the environmental effects of that work;

and must have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (General environmental and recreational duties) of the British Waterways Act 1995 and to the interest of CRT in preserving and enhancing the environment of its waterways.

Notice of works

8.— Network Rail must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

Construction of specified works

9.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under the provisions in paragraph 6 and with any requirements made under paragraph 6(3) and paragraph 7;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT.

(2) Nothing in this Order authorises Network Rail to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works Network Rail must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

Prevention of pollution

10.— Network Rail must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work: provision of information

11.—(1) Network Rail on being given reasonable notice must—

- (a) at all reasonable times and subject to any railway operational or safety requirements allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) CRT on being given reasonable notice must—

- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by CRT under this part of this Schedule during their construction; and
- (b) supply Network Rail with such information as it may reasonably require with regard to such works or the method of constructing them and Network Rail must reimburse CRT's reasonable costs in relation to the supply of such information.

Maintenance of works

12.— If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to Network Rail informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of CRT's fees, etc.

13.— Network Rail must repay to CRT all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 6(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network.

Making good of detriment; compensation and indemnity, etc.

14.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by Network Rail, Network Rail (if so required by CRT) must make good such detriment and must pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) Network Rail is responsible for and must make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this part of this Schedule which may be occasioned to or reasonably incurred by CRT—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of Network Rail or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work; and subject to sub-paragraph (4) Network Rail must effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by CRT on behalf of Network Rail or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator must not (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(4) CRT must give Network Rail reasonable notice of any such claim or demand as referred to in paragraph 14(2)(b) and no settlement or compromise of such a claim or demand is to be made without the prior consent of Network Rail.

Arbitration

15.— Any difference arising between Network Rail and CRT under this part of this Schedule (other than a difference as to the meaning or construction of this part of this Schedule) must be referred to and settled by arbitration in accordance with article 35 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited (referred to in this Order as Network Rail) to construct a second track on part of the branch line between Redditch and Barnt Green Stations.

The purpose of this Order is to construct a second railway track parallel to the existing railway together with a new platform and footbridge at Alvechurch station. The works also necessitate the diversion of an existing public footpath that crosses the railway to the south of Alvechurch Station.

The Order permits Network Rail to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the new section of railway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 33 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at Kings Place, 90 York Way, London N1 9AG.

INFRASTRUCTURE PLANNING

NATIONAL NETWORKS, RAILWAYS

The Network Rail (Redditch Branch Enhancement) Order 201[]

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